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HISTORY OF AUSTRALIA.

VOL. III.

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HISTORY

OF

AUSTRALIA.

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BY

G. W. RUSDEN,

AUTHOR OF "HISTORY OF NEW ZEALAND."

SECOND EDITION.

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AUSTRALIA.

VOLUME III.

CHAPTER XVI.

ALTERATIONS OF CONSTITUTIONS.

It is interesting to analyze the transformations of the Constitutions of the Australian colonies after they were submitted to local arbitrament. New Zealand formed an exception. In the other colonies changes, whether wise or foolish, were made after discussions, and in terms of local or Imperial enactment. In New Zealand it may truly be said that the adoption of responsible government was the unlawful result of insidious claims made by members elected under her Constitution Act (15 and 16 Vict., cap. 72), which had not provided, and was not intended to provide in any manner, for local responsible government, and that the Secretary of State, Sir G. Grey, who abetted it, became the cut-purse of the Constitution. The details belong to New Zealand history.

The gradual enforcement of the claims of colonists by means of Wentworth's Remonstrances probably hastened the action of the Secretary of State with regard to New Zealand; but the colony which had been in the van in Australia had much to suffer in acquiring self-government, and the boon was to be qualified by Imperial interference with the decisions of the colonial legislature.

Though Victoria, in consequence of the gold discoveries, rapidly became more populous than the parent colony, the

latter is entitled to precedence not only in point of time as to the elaboration of a new constitution, but also because in Wentworth she possessed the one man who stood head and shoulders above his fellows. Whether in impetuous youth flinging himself against the ramparts of autocratic government; whether contending for a laurel crown on the banks of the Cam; whether pouring forth unreported orations with an eloquence which his auditors remembered to their dying days as surpassing that of other men; whether, on less public occasions, in coarse vituperation sometimes using language which only his enemies could wish to cite; whether defying a governor or trampling on a renegade or slanderer; at all times he was the observed of all observers, and seemed able to rise in great emergencies with greater ease to the height of his argument. His Remonstrance in May 1851, and its supercilious treatment by Earl Grey—the protest of a new legislature against that treatment—the renewal of the Remonstrance in 1852—its reception by Sir John Pakington, and the celebrated despatch acceding to the terms of the Remonstrance, have been described.[1]

But Wentworth had not been willing to remain dependent upon grace. He strove but failed to induce the Council to postpone the estimates for 1853 until a reply to the Remonstrance might be received. He succeeded in obtaining, by

[1] How rapidly men forget, or with what confidence they presume upon the ignorance of others, was shown in Mr. Gladstone's written address to the electors of Midlothian (11th March 1880), which declared, as to the colonies, that Liberal administrations "gave them popular and responsible governments." Lord Hartington's address to the electors (10th March), with equal eccentricity, declared that if the colonies were more attached to the Empire it was "due to the fact that under the guidance of Liberal statesmen they have received institutions of complete self-government." To one familiar with the remonstrances of New South Wales against Earl Grey's despatch of 23rd January 1852, against his "disregard of the most earnest and solemn appeals of the Legislature," the addresses of Mr. Gladstone and Lord Hartington are absurd. They become something worse when confronted with the resolution of the Legislative Council in Sydney (14th June 1853) recording "its deep sense of the conciliatory spirit" evinced in Sir J. Pakington's despatch, and its hope that "a new and auspicious era in the government of Her Majesty's Australian colonies" had commenced. It is satisfactory to observe that the learned Professor E. Jenks, in his work on "the Government of Victoria" (M'Millan and Co., London, 1891), recognizes the importance of Sir J. Pakington's despatch, which he describes as "practically a concession of all disputed points," and also as the fruit of Wentworth's remonstrances (p. 190).

a majority of one, a resolution to refuse supplies for 1854 unless a favourable reply should be received. He, whom Dr. Lang had denounced as a conspirator with Deas Thomson against the liberties of his country, thus, in contention with Deas Thomson, drew from the armoury of English Constitutional History the weapons with which to control taxation.

The Constitution Act (13 and 14 Vict., cap. 59) of 1850 gave a power (sec. 32) to each Australian colony (after the establishment of their several Legislative Councils under its authority) to alter the constitution of its legislature, subject to a requirement that every bill for such a purpose should "be reserved for the signification of Her Majesty's pleasure thereon."

In June 1852 a Select Committee was appointed (by ballot on Deas Thomson's requirement) to prepare a new Constitution. In September Wentworth, the chairman, brought up the report. Doubts had existed as to the power of the House to deal so comprehensively with the subject as was desired, and the Committee prepared three draft bills—one a draft of an Imperial enactment to enable Her Majesty to assent to the others, and two separate bills —"to grant a Civil List," and "to confer a Constitution."

The last proposed that there should be two Houses. The power of each was to be equal, with the single exception that bills of appropriation, or "for imposing any new rate, tax, or impost," were to originate in the Assembly. All bills "affecting any Imperial subject" might be reserved for Her Majesty's pleasure.[2] The Committee had contained Deas Thomson, Plunkett, James Macarthur, Charles Cowper, Stuart A. Donaldson, T. A. Murray, James Martin, and others. Their opinions were divided as to the constitution of the Council or Upper House. All agreed that such a House was needful. The Council was to consist of not less than twenty-one members. On the remainder of the bill no difference existed in the Committee. The

[2] Some were specified—touching allegiance, naturalization, treaties, political intercourse with officer of "foreign power or dependency," command of forces, municipal militia and marine, high treason. If a question should arise as to the right of the Governor to reserve a bill, it was to be decided by the Judicial Committee of the Privy Council.

Assembly was to contain seventy-two members, and to endure for five years. Freehold of the clear value of £100, and household of £10 annual value, were to confer the suffrage for the Assembly. A license to depasture Crown lands in any district, or a lease in such district, qualified for a vote. No defaulter in payment of rates due was to be entitled to vote. The system of representation might be altered, as regarded the number of representatives, by bills with which the Council might on the second and third readings concur with an absolute majority, and the Assembly by majorities of two-thirds. All taxation was to be under advice and consent of the Council and Assembly. All bills for appropriation or imposing taxation were to originate in the Assembly, but there was no restriction of the power of the Council in dealing with them. No differential duties were to be imposed. The Assembly could originate no bill of appropriation or taxation except on recommendation by message from the Governor. Judges were to hold office during good behaviour. The high officials who were to be eligible as members of the Assembly were enumerated. Acceptance of office was *ipso facto* an avoidance of a seat in the House. Ministers of religion were disqualified by a special clause. Other disqualifications of contractors, &c., were separately treated. An oath of allegiance was to be taken by every member of the Legislature before he could sit or vote therein. During the session of 1852 the bills were not proceeded with, and Sir J. Pakington's answer to the Remonstrance of the Legislative Council arrived in the colony before Sir C. Fitz Roy met that body on the 10th May 1853, and received from them a hearty recognition of the spirit with which their remonstrances had been received in England. On the 20th May Wentworth obtained a Select Committee to prepare a constitution. On the 28th July Wentworth brought up the report. It advocated—

"a form of government based on the analogies of the British Constitution." The Committee had "no desire to sow the seeds of a future democracy, and until they are satisfied that the nominated or future elective Council which they recommend will not effect the object they have in view of placing a safe, revising, deliberative, and conservative element between the Lower House and Her Majesty's representative in this colony, they do not feel inclined to hazard the experiment of an

Upper House based on a general elective franchise. They are the less disposed to make the experiment, as such a franchise, if once created, will be difficult to be recalled. Actuated by these views, your Committee have introduced . . . two clauses, which to a certain extent are framed in accordance with analogous clauses to be found in the Imperial Act 31 Geo. III., cap. 31, for making more effectual provision for the government of the province of Quebec. That Act authorizes the Crown, whenever it thinks proper, to confer hereditary titles of honour, rank, or dignity, and to annex thereto a hereditary right of being summoned to the Legislative Council. Your Committee are not prepared to recommend the introduction into this colony of a right by descent to a seat in the Upper House; but are of opinion that by the creation of hereditary titles, leaving it to the option of the Crown to annex to the title of the first patentee a seat for life in such House, and conferring on the original patentees and their descendants, inheritors of their titles, a power to elect a certain number of their order, to form, in conjunction with the original patentees then living, the Upper House of Parliament, would be a great improvement upon any form of Legislative Council hitherto tried or recommended in any British colony. They conceive that an Upper House framed on this principle, while it would be free from the objections which have been urged against the House of Lords on the ground of the hereditary right of legislation which they exercise, would lay the foundation of an aristocracy which, from their fortune, birth, leisure, and the superior education these advantages would superinduce, would soon supply elements for the formation of an Upper House, modelled, as far as circumstances will admit, upon the analogies of the British Constitution. Such a House would be a close imitation of the elective portion of the House of Lords, which is supplied from the Irish and Scotch peerage; nor is it the least of the advantages which would arise from the creation of a titled order, that it would necessarily form one of the strongest inducements, not only to respectable families to remain in this colony, but to the upper classes of the United Kingdom and other countries who are desirous to emigrate to choose it for their future abode."

The first clause made all laws assented to by the Queen, or by the Governor in her name, valid and binding within the colony. Bills on Imperial subjects were, however, to be reserved at the discretion of the Governor for Her Majesty's pleasure. The second clause defined those bills as touching allegiance; naturalization of aliens; treaties; political intercourse or communications with foreign powers or dependencies; Her Majesty's forces by sea and land; defences; the command of municipal militia and marine; and high treason. The third clause committed to the Judicial Committee of the Privy Council the determination of questions as to the right of the Governor with regard to reserving any bills, or of the right of disallowance by the Crown. A subsequent clause (43rd), guarding the power of the Crown to issue instructions to Governors with regard

to bills, provided that "such instructions do not in any way fetter the Governor's discretion in giving or refusing Her Majesty's assent to bills of mere local or municipal concernment." The existing and all future Judges of the Supreme Court were to hold office during good behaviour, but were to be removable by the Crown upon addresses from both Houses. The Civil List provided salaries and pensions for the Judges, as well as salaries for the Governor and his Private Secretary and for a few chief officers of departments. A sum for pensions for functionaries who might be extruded from office at the commencement of responsible government, and an annual grant of £28,000 for Public Worship, completed the Civil List, which, irrespective of possible pensions, amounted to £48,550. The pension provision, of all descriptions, was £13,950.[3] The fourth clause made it lawful for the Governor, when authorized by Her Majesty, to summon no fewer than twenty persons as members of the Council, and in like manner to summon other persons from time to time. The fifth made it lawful for the Crown—whenever it might be thought fit to confer "any hereditary title of honour, rank, or dignity of such colony descendible according to any course of descent limited in such patent—to annex thereto by the said letters (if Her Majesty should think fit) a right to each original patentee to be summoned to the Legislative Council. . . ." The sixth provided that "whenever the number of persons to whom such hereditary titles shall have descended shall, together with the original patentees then under summons, . . . amount to fifty or upwards, the Legislative Council so denominated as aforesaid (under clause 4) shall cease and determine." The original patentees and the inheritors of titles were then to be convened, and they were to elect twenty of the holders of descendible titles, who, "with the original patentees then summoned, or thereafter to be summoned," to the Council, were to form the Upper House. All seats in the Council were for life, but could be resigned. The modes of filling vacancies and forfeiting a seat by con-

[3] The total Civil List in New South Wales was £62,500. In Victoria it was £112,750. The subject was much discussed in the House of Commons.

tinuous absence, or by tarnishing of allegiance to the Crown, were provided for.

It was provided that the government should have no power to influence the votes of place-men. Five officials were designated who might, as responsible officers, hold seats, and five additional officers might be designated. All other members were made incapable of sitting or of election after accepting any office of profit. An extension of the suffrage for the Assembly was proposed for all persons having a salary of £100 a year, and for all lodgers paying £40 a year for board and lodging, or £10 for lodging only. The tenure of freehold of value of £100 and household suffrage of £10 a year were maintained as under the existing law. The Upper House was to consist of not less than twenty[4] members; the Lower of fifty-four. The duration of an Assembly was limited to five years. Full power to alter the constitution was conferred "whenever there shall be a majority of two-thirds of both Houses in favour of any such alteration, reserving to Her Majesty the right of assenting to or dissenting from any bill for this purpose that may be presented for the signification of Her Majesty's pleasure thereon."

Responsible government was to take effect when the new "Legislative Assembly, consisting entirely of members elected by popular constituencies," might assume its functions. The existing officers of State would receive pensions when "actually displaced" by the new "order of things likely to arise when responsible government takes effect among us." A legislative measure much required by New South Wales and all the Australian colonies was "the establishment at once of a General Assembly to make laws in relation to intercolonial questions," such as intercolonial tariffs and coasting trade; railways; roads; canals, &c., running through any two colonies; lighthouses; intercolonial penal settlements; postage; intercolonial gold regulations; a general Court of Appeal; a power to legislate on other subjects by invitation of any colony, and to appropriate necessary funds "to be raised by a percentage on the revenues of all the colonies interested." It was deemed unadvisable to incorporate such provisions in the

[4] This number was altered in the House to 21.

New South Wales bill, but it was hoped that Parliament would legislate expressly on the whole subject. Accompanying the Constitution Bill was a Draft Bill, to which, if the British Parliament should agree and the Queen should assent, the recommendations of the Committee would become the law of the land. But the difficult problems of creating an Upper House and of preserving from rash hands the essence of a written Constitution which, as it was called into existence in one day, might be mortally wounded in another unless some ægis should be thrown over it by the sagacity of its constructors, were ill-apprehended by the majority of those by whose votes they were to be determined in Sydney. Wentworth's Committee had no desire "to sow the seeds of a future democracy." But they were sown already. The work of England had been one-sided. She had nurtured only the democratic principle in her colonies. She had, indeed, sent governors who exercised military and departmental authority in her name in newly-founded settlements, but all knew that such authority was ephemeral. It would be succeeded by institutions planted or grown on the soil. It could not be maintained in perpetuity by governors following each other in rapid succession, and coming into contact with an ever-increasing population, strong in its growth and maturing day by day the harvest proper to the seed which had been sown.

It was nought to English statesmen, except Pitt and a few others, that the aristocracy of England won for her sons the priceless heritage which Stephen Langton enshrined in the Great Charter; that through gloomy and confused ages the gentry of England confirmed that heritage by life and death struggles, sometimes apparently hopeless, but resumed by generation after generation. The vulgar error which would impute to the populace of England or their representatives the wisdom or the courage which won her liberties is dissipated by the light of history, which shows that men of noble birth, and the knights of the counties who were ever in the van, gained the victory, and deserve the renown. No class analogous to them was created or encouraged in the colonies except by Pitt in framing a Constitution for Quebec. The birthright of Englishmen

was withheld from them when they went forth to England's colonies. A spurious contempt for the days of small things, perhaps in some high-born minds a mean jealousy of any imitation abroad of their privileges at home, and an incapacity to understand that not to themselves but to great principles they owed their honours; a general inadequacy of comprehension of the work in which England was engaged when she planted her flag in the far-off regions of the earth;—these and subordinate causes may be deemed the reasons of her failure; but the consequence was that, whether by defect of understanding or of will, England withheld from her colonizing sons the glory and the grace which were their birthright, achieved by the deeds of the common forefathers of those who remained at home as well as of those who carried their banners to her dominions abroad, and found themselves unrecognized by their kindred in England. An occasional generous aspiration of the Earl Derby of 1852 gleams through the mist, in discussions on the colonies. Others may have sympathized with him. But general crassness prevailed, and Earl Grey reduced it to a phrase as conclusive against himself as he intended it to be against his opponents. A House of Lords (he said) "can no more be created by Home legislation than one of the magnificent oak-trees which had been planted at the Conquest, and which is now crumbling into dust." It is not by removing ancient oak-trees but by planting acorns that forests are produced; and the tree sprung from the acorn flourishes while woods of former days decay. It is not the senility, but the ever-renewed youth of the House of Lords, which continually receives fresh elements of vigour from the nation, that has prevented the peerage of England from crumbling like the oaks of the Conquest. The power of renovation of the ancient institution proved that it satisfied the cravings of the human mind. The passion displayed in the feather worn by the savage glitters in the coronet of an earl. It was the dulness of men in England, and not the barrenness of colonists, which withheld from England's enterprising sons what Earl Grey so superciliously denied them. And yet, in harmony with the words of Pitt, one of the seers of the century had uttered words of warning. De Tocqueville had said—

"Aristocracy made a chain of all the members of the community from the peasant to the king. Democracy breaks that chain and severs every link of it."

Wise in their own generation, men tainted with disloyalty to the Crown in New South Wales were ever forward in sneering at any hereditary order. One attempt was made by a scholar-like lawyer, Mr. Justice Dickinson, to divert the public mind to healthy channels. He advocated[5] the creation of a baronetcy attached to the soil; that when seventy-five existed, twenty-five more should be created, and that thereafter there should be selected from the whole body thirty members to form an Upper House in a manner which he described in detail. His argument was assailed by those who thought the project premature, as well as by those who hated its essence; but his high personal character protected him from scurrility,

Dr. Lang[6] was absent in England; but others were ready to do his work, and amongst those who seized the occasion to vault into popularity was Mr. J. B. Darvall, once appointed a nominee member by Sir G. Gipps, but subsequently elected. Troubled by no attachment to the land, he was a convenient champion for men of less mark, who saw in guarantees for social order the destruction of their own hopes. Mr. Thurlow, the Mayor, an admirer of Lang, convened a meeting in 1852 in Sydney, at which a Democratic League was formed. The Draft Constitution Bill of 1852 roused the wrath of the League. They declared that the question was—"Shall New South Wales become a land of serfs, and be governed by an aristocratic oligarchy, or shall it become a nation of freemen, . . . on the broad basis of a constitu-

[5] A "letter to the Speaker of the Legislative Council on the formation of a Second Chamber in the Legislature of New South Wales." By J. N. Dickinson, one of the Judges of the Supreme Court. Sydney, 1852.

[6] In a "Sketch of his own Life and Times" (Sydney: 1870) Lang said that in 1853 the Legislature "all but saddled us with that old man of the sea, the precious incubus of a colonial nobility. It was a narrow escape the colony had in that crisis. . . . Mr. Wentworth would fain have been a live Australian lord." Lang was mistaken. Wentworth, who was without vanity, was too proud to accept for himself that which he had sought for his country. The ephemeral personal distinctions with which the Colonial Office gratified unrepentant rebels, and party-leaders of the hour, in colonies, had no charms for a man whose object was to lay the foundation of enduring welfare for the country; and when personal distinction was proffered to him, he declined it.

tional monarchy?" They would carry their complaints to England, where with Gladstone (whom they styled "an eminent Conservative"), Lowe, and Roebuck to "advocate the cause of colonial democracy" they did not "tremble for the result." They denounced the bill of 1852 as tyrannical, illegal, and unconstitutional. Their diatribes did not deter Wentworth in his labours. When the Draft Bill was published in 1853, the League and their patrons assembled. Mr. Henry Parkes was notable amongst the speakers. Imported as an assisted immigrant, he had raised himself from humble position to that of editor of the *Empire* newspaper, established by his energy. He had, in support of Mr. Lowe in 1848, and of Lang afterwards, and in advocating physical force to resist transportation, proved his thoroughness. A public meeting was convened (15th Aug.) "to resist the flagrant attack upon the public liberty" contained in the Constitution Bill, about to be debated on the following day in the Legislative Council. Mr. Parkes admitted Wentworth's "great abilities and perfect knowledge of the momentous business in hand," but assailed the bill as "a hasty, iniquitous, and fraudulent attack upon the liberties of the people."[7]

The meeting carried its resolutions with acclamation, but did not disturb Wentworth, who goaded Parkes to fury by speaking of him as an "arch-anarchist." Parkes retorted in the *Empire*. Mr. Cowper, ever anxious to link himself with a majority, closely associated himself with the malcontents, although he had been a member of the Committee which prepared the bill, and was present when the report was adopted.

On the 16th August Wentworth, in moving the second reading of his bill, reminded the House that when they were elected it was well known that on them would devolve

[7] It is fair to Mr. Parkes to state that in his place in the Legislative Assembly in 1872 he said:—"Of Mr. Wentworth's labours in the Constitution perhaps I may be permitted to say that I have lived long enough to see the error of some of my feeble opposition to those labours. I have lived long enough to know that in that Constitution he was careful with the painstaking care of a man having a fatherly regard for his country, to make broad the foundations of it." Mr. Parkes had learned wisdom at the expense of the country; but could not undo the mischiefs which with the help of Lang and others he had inflicted upon it.

the duty of framing a Constitution; that by the bill of 1852, published but not enacted, they had acquainted the public with their views, and that with those views the public had silently acquiesced. Adverting to the public meeting of the 15th, he regretted that members of the House, by the part they had taken, had "destroyed the freedom of the representatives of the country, and degraded the position which the Legislature ought to occupy; and I lament much to see some honourable members, my friends, and who have on most occasions acted with me, consent to sink from the rank of representatives to that of mere miserable delegates." Referring to the requirement of a majority of two-thirds to effect organic changes, so that the Constitution might not be altered and shattered to pieces by every blast of popular opinion, he showed, to the confusion of Mr. Darvall, that a similar safeguard was embodied in the Constitution of the United States of America. Glancing at the ordinances recently imposed by the Colonial Office upon colonists at the Cape of Good Hope, he asked how English statesmen could learn the requirements of the colony. If anxious

"to obtain information, where (in the absence of any work of high authority) could they seek for it except from the most erroneous and polluted sources? (Hear, and oh!) I emphatically repeat my question—Where, except from the most polluted sources? (Loud and prolonged cheers.) Look to certain books and brochures lately given to the British public under a name[8] not necessary to mention in this Council, and I will ask honourable members whether information could be sought from a more depraved and polluted source. (Hear, hear, hear.) I will ask this Council whether the statements contained in those books are true or false, and whether any Minister of the Crown, or any other individual seeking information as to the real state of this colony could rely upon any assertion contained in them? The anarchist whose name is affixed to them . . . describes (a great federation scheme) as peremptorily demanded by the colonists, the penalty of refusal being their 'cutting the painter.' Now supposing that any Minister of the day could be so weak as to place reliance upon such abominable trash as this, what must be the inevitable result?"

Defending the creation of a hereditary order (advocated by Pitt, by Burke, and Wilberforce), he contended that the

[8] Dr. Lang, in 1852, published a third edition of his "History," and his "Freedom and Independence for the Golden Lands of Australia." In the latter he said:—"There is no other form of government either practicable or possible in a British colony obtaining its freedom and independence than that of a republic." . . . Monarchy had been *permitted*, "but republicanism existed from the first by *Divine appointment*;" and colonists "must take their portion out of the hand of the Amorite with their sword and with their bow."

adoption of his proposal would lead to the formation of a powerful body of "men of wealth, property, and education —men not raised from any particular section of the community, but from every class that has the energy to aspire to rank and honour." The want of such an incentive to a laudable ambition was a confessed blemish in the American Constitution.

"It was well known that the great Washington had anxiously contemplated the introduction of a titled order into the Constitution of the States; but it was an incident in the career of that illustrious man that he lived to become an object of suspicion to the ungrateful country he had served so faithfully and so long. True, posterity has done justice to his memory and fully recognized his exalted patriotism, his noble virtues, his eminent services, the purity of his intentions; but in his lifetime he was doomed to find how shallow and transient is popular favour."

Without such a career before them, who that could escape would be content to see their children occupied in the money-making schemes of a filthy-lucre-loving community?

"Who would stay here if he could avoid it? Who with ample means would ever return if once he left these shores, or even identify himself with the soil so long as selfishness, ignorance, and democracy hold sway? And yet, what a glorious country would this be to live in if higher and nobler principles prevailed; blessed with the most bounteous gifts of Providence, it affords in its illimitable tracts happy homes for millions yet unborn. With regard to the clauses in question, I know not the opinions of honourable members, but I can only say that if they be not adopted the colony will be virtually disfranchised. (Loud applause from all sides.) Why, I ask, if titles are open to all at home should they be denied to the colonists? Why should such an institution as the House of Lords (which is an integral part of the British Constitution) be shut out from us?"

He showed that the hereditary and elective principle could not come into force till after the lapse of thirty or forty years. The proposed order had been ridiculed.

"I seldom care to allude to personal attacks upon myself, and if I allude to some which have been recently made it is but to express my utter contempt for the vagabonds who made them. I am not the man to be deterred from pursuing the course which I conscientiously believe to be the right one. I may be mistaken in my opinions, but I am assured that in no wise have I forfeited the confidence and respect of those who well know the public principles which have ever guided me in my public career. (Loud applause from all sides.) The paltry efforts of my dirty revilers therefore do not affect me. If it be true that there is any blot on my escutcheon (if I have one) which has not been my handiwork, what blame on that account can attach to me? I deem it sufficient to answer for myself alone. I submit my whole public life to the severest scrutiny, and if it will bear that test I do not see on what principle I can be blamed,

or in any way held responsible for acts which it has not been in my power to prevent, nor in my choice to rectify. I speak for myself alone, and in the language of Pope will say—

> "'Honour and shame from no condition rise;
> Act well your part, there all the honour lies.'"

This is my reply to the revilings of the dirty ruffians who have cast them.

"I have been taunted with entertaining a desire to be one of the hereditary legislators of the colony. Whether I do or do not entertain that desire is a matter of very little moment; but, admitting that I do, is it an improper object of ambition? or am I to be denounced for cherishing the hope that some son of mine will succeed me in the councils of the country? If such an ambition were felt by some fifty or sixty other gentlemen of this colony from whom ultimately might spring an honourable, wealthy, and educated aristocracy, I would ask—Are those mischiefs to be avoided, or ends to be desired and consummations devoutly to be wished for?"

The remainder of his speech it is needless to refer to in detail. He analyzed the Constitutions of the United States, their vices confessed by De Tocqueville, the ostracism of the wisest, the prevalent corruption, demoralization, and grasping at spoils. For their reputed munificence there were two reasons—"because the expenditure is directly or indirectly beneficial to themselves, and because for the most part the taxation of the country which applies to it is derived from the rich." The government was the reverse of economical; and, by De Tocqueville's admission, tyrannical over the administration of justice and in coercion of public opinion. He apologized for lengthy citations from De Tocqueville and Calhoun in proof of the different framework of the British Constitution which he advocated, and the American model which some would copy, but he heartily despised. The period of its dissolution it might be difficult to predict; but when the demoralization by presidential elections might be complete, when one party might be strong enough to grasp at permanent domination, the election would be made for life, and a despotism would be established which would monopolize the revenues, and lavish them in rewarding those who had contributed to the elevation of the despot. The germs of such despotism had been sown, and the consummation could not be remote.[9]

Did Australians wish for the American or for the English Constitution? If they wished for the former they must

[9] Wentworth lived to see the appeal to arms which followed the rejection of Breckinridge and the election of Abraham Lincoln in 1860.

have an elective President as well as an elective Upper House. As for the petition praying for delay of a month, although the public had had several years in which to express their opinions, and had acquiesced in the proceedings of the Legislature, he was very unwilling to disregard it. Although to defer the bill might be in effect to abandon it; although the object of those who had set Darvall in motion might be to defeat the measure altogether, when Wentworth and Deas Thomson were absent; nevertheless, to take away all pretence of fair opposition, he was willing to allow three months' interval, instead of one, for consideration of the bill after its second reading, and would take that reading on the understanding that the principle of having two Houses was affirmed, and that it was an open question whether the Upper House should be elected or nominated.

James Macarthur, of Camden Park, formally supported the second reading of the bill. Mr. Darvall opposed it in a speech which was not without cleverness, and it was said that it was by accident rather than on principle that he opposed the bill, in favour of which, but for accident, he would have been just as willing to speak. It may be thought superfluous to allude to such speakers, but it is the irony of history that whether they be, like Darvall, self-seekers; or, like delegates, bondsmen to dictation, the folly of mankind puts power into their hands.

Mr. James Martin, in a speech universally applauded, supported the formation of an elective Upper House, based on a different franchise from that of the Lower House, and holding seats of longer duration. Though he differed from Wentworth, he castigated Darvall for transferring to a mob the allegiance he owed to the Legislature and to the colony. He hoped (but alas! in vain) that the English Parliament would have "sufficient discrimination to distinguish between the calm and deliberate acts of this House and the absurd conclusions of such a casual, incapable, and unreflecting mob as that." Without wearying his audience, he cited the examples of ancient states and the words of statesmen. His own proposal was that the Upper House should be elected by the large freeholders—men possessing

so great an interest in it that it would "be next to impossible for demagogues to impose upon them."

"I desire to blend, if possible, the opposite elements of liberty and restraint in one consistent whole—to secure at once and permanently for the people of this country that *imperium et libertatem*[10] which constituted the memorable feature of perhaps the greatest reign on record." . . . "Heirs of the British Constitution ourselves, it should be our pride as well as our duty to hand down our noble inheritance . . . in all its full and unclouded splendour to our poserity. But, while preserving its spirit, let us not be too tenacious of its forms. Let us not, while aiming at conservatism, fall into the wildest democracy. Let our checks and balances be real and powerful, but elastic. So shall we lay the foundation of a nation not only speaking the language and imbued with the literature, but in every way worthy of that great people who first taught the lesson of freedom to mankind."

When the cheers which saluted the future Chief Justice had subsided, the upright Attorney-General, Plunkett, whose sincerity no man doubted, gained by that virtue an applause which had not greeted the efforts of Darvall. Mr. Charles Cowper identified himself with the aspirations of those who had been denounced in the House as "paltry ruffians." The authorities he quoted were the speeches of modern officials. "I have no predilection in favour of any particular kind of constitution. All I desire is to have something that will work well; . . . if I could be satisfied that the scheme before the House would work well, nothing could give me greater pleasure than to withdraw my opposition." (He had indeed no idols of the den, but he had gods in the market place.) It was argued that "population was not the only element" to be considered in distributing seats, "but I believe that in this colony property and population go very nearly together." Mr. James Macarthur followed, and reminded Cowper that he had recently supported the principle of a nominated Upper House when it was advocated by Mr. Lowe. Macarthur pleaded for the bill, and cited numerous constitutional authorities. Wentworth,

"in framing a constitution for our common country, has at heart the promotion and security of its best interests. To attain this he has devoted to the task, with that zeal and ardour which characterize him, his talents,

[10] When Lord Beaconsfield afterwards collocated these words in 1879 there were numerous letters in newspapers English and Continental. A German scholar traced the words to the fourth oration in Catilinam.

his best energies, every generous impulse of his nature, united and controlled by a deeply-seated and fervid love of country. It was the force of this feeling which led him to beat down opposition by the lightning of his eloquence, or to seek to crush it in the grasp of his strong sense." (In future days) "when no longer the dupes of speculative theorists or unscrupulous demagogues, the people of this city will wonder at their temporary blindness, and with one voice award to their distinguished representative his true desert." . . . "I entertain a firm reliance that it is reserved to Australia, under the auspicious shelter of that constitutional form of government with which will be connected a name not unknown to history, to rear a power on this shore of the Pacific: . . . thus will this Australian province be looked upon with admiration by the nations of the earth, and history will point to her prosperous career as combining the blessings of good order with true, moderate, and rational liberty."

In the struggle between British principles and democratic notions, he hoped their children's children would win triumph for reason and England in his native land.

Another native of the colony, Robert Campbell, son of Governor Bligh's friend of 1808, followed John Macarthur's son in the debate of 1853. The distribution of seats vexed his soul.

"The hamlets will have an additional member, and Sydney—my native city—only four members altogether. . . . The democratic principle must prevail wherever the British Constitution is carried out . . . I stand here contending for universal suffrage, (but) I feel that the people should allow the Upper House to be nominated by the aristocracy. . . . This Upper House should, I think, be elected independently of the Crown and the people. If the members are mere nominees it is impossible that they can be independent; but all difficulty may be got over by introducing the elective principle, and allowing the members of the aristocracy to elect their representatives. This, too, may get over the difficulties and disputes between the advocates of the elective and nominee principles."

Mr. Campbell made no attempt to define the aristocracy to which he, as a democrat, would entrust the formation of an Upper House. His words are only quoted here to show the nature of the opposition to Wentworth. Another member, Mr. (afterwards Sir) George Macleay, who had served on the Select Committee, calling to "mind the infamous works lately published in England about the colony," was not surprised that its character was misunderstood. "As Englishmen, and loving England, as Australians, and loving Australia," it was the solemn duty of members of the House to adhere to English principles, and not hastily adopt American innovations.

Deas Thomson, supporting the bill, showed how large were the powers with which its terms invested the colonists.

He declared that every nominee in the House was free to speak and vote on the question "according to his own unbiased judgment." On such a measure government influence would be improperly employed. Mr. Thurlow (the mayor) thought the English Parliament would

"never venture to confirm a law which has been passed by thirty gentlemen in the face of thousands." . . . "I entreat the House to pause before it admits this principle of nomineeism into the bill. After having contended so long and so earnestly to get rid of this system altogether, it is better that hell should gape and swallow us than that we should thus by our own act give up a measure of freedom within our grasp."

Thurlow, once a follower of Wentworth, had become a pupil of Lang. Mr. G. R. Nichols, popular and notable as an advocate of popular rights, was stung to prompt speech for the bill. "When future generations shall enjoy the inestimable blessings of true public liberty—when the party animosities and personal antipathies of the present day have faded away—when our posterity comes to weigh impartially the great actions of distinguished men, I believe they will place at the head of the list of the worthies of Australia the name of William Charles Wentworth." Loud cheers welcomed the prophecy. As for being guided by Mr. Lowe's opinions, "Mr. Lowe is well known to have changed his opinions as often as a chameleon changes his skin." Mr. Nichols concluded with an earnest declaration, that in supporting the maintenance of the great principles of the British Constitution he was labouring for his country's good. "I know no other country but this. It is my own." Other speakers followed.

On the 2nd September Wentworth replied. Recognizing the completeness with which Mr. Martin had demolished the arguments of Darvall and his friends as to an inherent and inalienable right to representation, and the fact that after Martin spoke the miserable faction seemed to have arrived at the conclusion that their "schemes for the revolution of this country cannot, at all events, be realized now," he declared:—

"I labour, notwithstanding, under a weight of oppression which I never yet before experienced. Commendations, unmeasured commendations, have been heaped upon me within these walls. But, sir, it would seem that I am a despised and calumniated object beyond them. It is some consolation that I retain the friendship of my early associates, of those

who have been the partners of my toils, my feelings, and my fame. After a life spent in the service of my country, it is not gratifying to find that I am a man so little understood by the great body of my countrymen—that all the efforts, all the labours of my life to achieve the liberties of my country—those liberties which we have won in frequent contest, piece by piece, until we now have this glorious opportunity of accomplishing their consummation- I say it is painful to see that, notwithstanding the long period I have devoted to this object—I may say almost exclusively devoted to it—the people of this country can style me their earliest champion, their best friend,—a traitor—aye, sir, a traitor to those liberties which certainly I have been mainly instrumental in achieving. Sir, I admit there has been a weak point of mine in this debate—that I have taken notice of the calumnies and slanders heaped upon me. But, sir, I would not have it believed, for it is not true, that the epithets I retorted upon my revilers were epithets addressed to the colony or the people at large. No: they were limited, at all events in my intention, if not in my words, as I believe they were, to the vile slanderers themselves. I never meant to apply those terms which have been considered so objectionable, and which I admit were objectionable, to any beyond the few paltry assailants of my motives and my character. And, sir, I hope the public at large will receive from me the sincere declaration of what was the real object and intentiou of the words which I then uttered. (Loud cheers.) No doubt it is expected of me, and perhaps with reason, considering that now sixty winters and more are on my head, that I should possess some moderation. No doubt it is expected that when I am smitten on one cheek I should turn my other cheek to the smiter. Unhappily it is not in my temperament or in my nature to be thus forbearing. There is within me a flood of lava which ever and anon boils over, and which I cannot keep down. This is the infirmity of my nature rather than the fault of my intention."

The inconsistencies of Darvall and the blunders of the "arch-anarchist" Parkes proved

"how difficult it is to frame a constitution, how impossible it is to avoid some folly or other when we depart from the great landmarks of the British Constitution, when we cease to regard the maxim—*stare super antiquas vias.* That, sir, is the maxim we ought to adhere to. It is the maxim which has guided me in framing this measure, and the maxim which I confidently anticipate will be adopted by this House. Sir, I do believe from my conscience that all the opposition we are now encountering has arisen from a few obscure demagogues, who, if they could get the upper hand in this country, would tread with an iron heel on its neck. I do not deny that many honourable and respectable men have been induced to join in this movement."

The three months during which he proposed to delay progress with the bill, so that public opinion might be maturely formed, would, he hoped, dissipate the organization or conspiracy against the measure. He confuted the reproach that the proposed Upper House would be impenetrably obstructive by showing that though it was to contain

not less than twenty members, the Governor could at any time, under Royal sanction, add more.

He foreboded that two elective Houses might coerce the Governor, and the ultimate consequence would be "a dissolution of the connection with Great Britain. Yes, sir (on the plan of Darvall, Parkes, and Cowper), in the place of the Crown must be substituted an elective President, and this country must very soon, or at all events in the long run, become a republic and nothing else." Much of the outcry against the bill was due to absurd rumours that he and others aimed at titles of Duke and Earl; but no supporter of the bill contemplated that any higher title than that of baronet would be conferred. For his part, he thought the colonists had been "too long excluded from titles." As to the insinuation that he desired one, he denied it. He still thought that an hereditary order, not necessarily born to the privilege of legislation, but capable of electing legislators after the manner of Scotch and Irish peers, was good for the country; but his views would probably "be opposed by a majority of the House as they were by a majority out of doors," and he was not inclined to persist in them in defiance of a majority. Without the clauses on that subject the bill was complete, and supplied by the fourth clause a nominated House which would exercise and have "a right to exercise a veto on the legislation of the Lower House." He denied that he had in former days denounced the principle of nomination. What he had denounced was the idea that an unofficial nominee should vote, not independently, according to the intention of the Constitution, but against his conscience in order to please the government.

Further, he was accused of tergiversation, of deserting his love of democracy. He denied that he ever loved it; and, amidst a storm of applause, which spread from floor to gallery, read the concluding patriotic lines from his Cambridge prize poem—"a production which attracted more attention than it deserved, but which at all events shows that from my boyhood upwards the establishment here of the British Constitution has been my sole end and aim." That effusion would prove that he commenced his career as an ardent admirer of the British Constitution,

"and that only under a policy which was to flow from a similar constitution did I ultimately expect an empire to rise in these seas and upon these shores which might rival in greatness and in splendour the glorious mother-land when her glories have departed. This was my early dream—it is the hope of my life; a hope which I will not part with but with the last pulse of my existence. Sir, I feel that we have arrived at a great crisis in the history of this country. I feel that we are in the throes and agonies of a constitution which must influence for good or for evil, for weal or for woe, our future generations—influence them, I repeat, in exact proportion as we assimilate the Constitution to the glorious model of our fatherland. Sir, I am aware that there are those by whom the authority of the ancient pilot is unheeded. I know that we are surrounded by a crew of rash and daring, and as I conscientiously believe, of disloyal innovators, who would wrest the helm from my hands, and steer the vessel right on the rocks which lie ahead of her. Sir, those rocks are anarchy and confusion. These are the Scylla and Charybdis we have to avoid, and which we must avoid, before this glorious vessel of the State can be anchored in security. Sir, I call upon the officers and the crew of this vessel—that is, the loyal part of the crew—to put down this mutiny—to put it down, I repeat, at all hazards. I call upon them to be firm, to be resolute, to do their duty. Sir, if we are firm, we shall succeed; if we falter, we shall be beaten. Sir, we shall not retire from this disgraceful and ignominious contest—this fatal Pavia—even with our honour. No: we shall leave even that behind; we shall not be able to exclaim with Francis I.—*Tout est perdu, sauf l'honneur*. Sir, we have in this matter a solemn duty to perform—that duty which we owe to ourselves, our children, our posterity, our country, and our God. I call upon you fearlessly, faithfully to perform it. We cannot recede without disloyalty and disgrace. Our only chance of success lies before us; lies in an onward course to the goal we have in view—the consummation of this glorious Constitution. Sir, I will trouble the House with but a few more observations. This is probably the last occasion—at all events the last important occasion—upon which this voice may be heard within these walls; and the time cannot be far distant when this tongue will be mute in death. In the short interval which must elapse between me and eternity, on the brink of which I now stand, I would ask what low motives, what ignoble ambition can possibly actuate me? The whole struggle and efforts of my life have been directed to the achievement of the liberties of my country; and it is with this Constitution which I now present for its acceptance that this achievement will be consummated. Sir, it has not only been my misfortune, but it has been the misfortune of all my countrymen that we have not lived in troublous times, when it became necessary by force to repress domestic faction or treason, to repel invasion from without, or perhaps to pour out our chivalry to seek glory and distinction in foreign climes. This is a privilege which has been denied to us. It is a privilege which can only belong to our posterity. We cannot, if we would, sacrifice our lives upon the altar of public good. No such opportunity has occurred, nor probably will occur to any of us. Yet, sir, there is one heroic achievement open to us, and that is to confer upon this country that large measure of freedom, under the protecting shade and influence of which an ennobling and exalting patriotism may at last arise which will enable the youth of this colony—the youth of future ages—to emulate the ardour, the zeal, and the patriotism of the glorious youth of Sparta and of Rome, and teach and make them feel that ennobling sentiment which is conveyed in the lines of the Roman lyric: *Dulce et*

decorum est pro patria mori. Sir, this is not our destiny, but I trust it will be the destiny of another generation who shall arise with larger feelings, and it may be purer aims. Sir, this great charter of liberty, which I believe will be pregnant with these results in after ages, I leave now as my latest legacy to my country. It is the most endearing proof of my love to that country which I can leave behind me. It is also the embodiment of the deep conviction which I feel that the model, the type, from which this great charter has been drawn is, in the language of the eloquent Canning—the envy of surrounding nations and the admiration of the world. Sir, in the uncertainty which hangs over the destiny of the country—in this awful crisis of our fate—I can only hope that the deliberations of the country may be guided to a safe conclusion upon this vital question, and that by a large, a very large majority of this House and of the community beyond it, the Constitution will be gratefully and thankfully received."

The Speaker vainly strove to quell the tumult of applause which saluted Wentworth as he sat down. An eye-witness[11] describing the scene at the time, wrote that, throughout, the speech "not only drew heavy rounds of applause from the spectators, in defiance of all rule and the Speaker's repeated calls to order, but it so deeply affected the members that at those parts which referred to the honourable gentleman's own career, and to the probabilities of its speedy termination by the hand of death, half of them were in tears."

It was the terrible earnestness of Wentworth which nerved him on all great occasions, and imparted itself to his auditors. He never sought to win others to believe what he did not in his own heart of hearts believe to be true. His enemies knew this while they plotted against him. The quotations from his speeches have been long, but they were necessary. They will be almost the last in this work. They make Wentworth known as he was; and it is in order that the men of the time may be known as they lived and were seen that their words and writings are cited in these pages.

The second reading of the bill was carried by 33 votes against 8. It was understood that the clauses relating to hereditary honours were to be abandoned. The community would not accept them. But the opponents of the bill were not content with such a triumph. They prepared to undermine the measure in England in the event of its passing in the colony.

[11] Correspondent of the Melbourne *Argus*. (*Argus*, 9th Sept. 1853.)

Wentworth had been disrespectful to the Whigs. In denying that he had been a democrat he had declared that he was a Whig until he was ashamed of Whig-ism. "I was a Whig until that great Whig leader and despot, that man who played so many pranks with the colonies, and with this colony in particular—Earl Grey—and his faction, converted me from Whig-ism." On that text persuasions might be founded, and Lord J. Russell might be moved to destroy Wentworth's handiwork. Moreover, Mr. Robert Lowe was in Parliament, and though a man whose pliant tongue had, in a few revolving moons, been at the service of Governor Gipps, of the opposition to Gipps, and of the opposition to that opposition, could hardly be depended upon in support of any principle, yet hatred of Wentworth might envenom his efforts to mar any scheme which Wentworth had at heart.

In this instance Cowper, Parkes, and their friends did not miscalculate. But they strove also to defeat the bill in the colony. A public meeting was held in the open air. Darvall, Cowper, Robert Campbell, assisted Parkes. They condescended to ask for cheers for the Queen, and obtained the same guerdon for the eight members who had voted against Wentworth. Mr. Parkes thought fit to disclaim republican desires. He for one, "after the contumely heaped upon" himself and his friends—"after the unconstitutional doctrines which had been propounded by the Legislative Council, would never send another petition to that body on this question." Petitions were nevertheless presented from various parts of the colony. Some were in favour of the bill—some against it. The latter were more numerously signed than the former.

True to his promise, Wentworth (9th Sept.) induced the House to postpone farther progress with the bill until the 6th December, for which day a call of the House was ordered. Both sides used the interval. It was easy to obtain shouts of applause from the ignorant, but the opposition did not find the intelligence of the country with them. They had on their side political schemers, enthusiastic sciolists, and the proletariat of a community recently exempted from infusion of convicts. The weapon was foul, but not too unclean for Cowper, Darvall, and Parkes to

handle. Nor was it repulsive to Robert Lowe in the House of Commons.

The Council on reassembling received petitions, of which a few were in favour of the bill. Those adverse to it were not weighty enough to imply that the bulk of the electors distrusted the judgment of the House. Darvall, striving to shelve the bill for six months, was defeated by 35 votes against 9. In committee the minority endeavoured to excise the provision which made the assent of two-thirds of members essential before changes in the Constitution could be made. Darvall, Cowper, and Robert Campbell were again in a minority formed by eight members. Mr. J. Martin obtained eight supporters of the elective principle for the Upper House. Thirty voted against him.

Wentworth, unable to induce a majority to support the clauses relating to hereditary distinctions, abandoned them;[12] and it was resolved on his motion (8th December)

[12] The biographer of Mr. Lowe appears to have received strange stories as truth. He wrote (p. 97, vol. II.): "The fact is that but for the influence of Robert Lowe in Parliament and on the *Times*, Wentworth and the little knot of Crown officials in Sydney had the whole matter in their hands. As far as one can see they would have made themselves peers, voted themselves retiring pensions at the rate of their full salaries, or have done anything else without let or hindrance and in defiance of public opinion in the colony." If amongst materials placed in the biographer's hands there were any on which such accusations could be founded, all dwellers in New South Wales who were acquainted with Wentworth, Deas Thomson, Plunkett, and many others will know that the materials were misleading. Peerages were never proposed; and the baronetcies contemplated by Wentworth for the Upper Chamber were abandoned in the colony as shown in the text, and could not be the subject of Lowe's criticism in England The biographer mentions (p. 96, vol. II.) that "even Mr. Rusden, the Australian historian, seems to think that a House of colonial peers constructed out of the somewhat dubious elements then to be found in Sydney would have been a breakwater against democracy." As "a House of colonial peers" in the sense used by Wentworth's opponents was never suggested by him or any of his friends, the author never thought about such a House. What he thought desirable in any state was a barrier against rash and unwise legislation, and such a barrier Wentworth's proposed hereditary baronetcy was intended to provide in conjunction with the terms of his Constitution Bill. Whether Wentworth's plan would have served (like certain safeguards in the constitution of the United States) as a means of ascertaining the mind of a people rather than its passions, no biographer or historian can now declare. If Mr. Lowe's biographer be of opinion that any legislation demanded by a majority in any community ought to be enacted howsoever injurious, the author has the privilege of disagreeing with him and finding himself in accord with

that in the first instance the members of the Upper House should be appointed by the Governor with advice of the Executive Council for five years, and that if during that term no amendment should have been lawfully made in the Constitution, the Governor should, with like advice, nominate all future members for the term of their natural lives.

Cowper and his friends made no attempt to lower the franchise proposed for the Assembly. They endeavoured to strike out the provisions for pensions, although every Secretary of State of whatever party had instructed Governors that faith must be maintained in all cases with "holders of present interests."[13] They voted against the clause empowering the new Legislature to deal with the waste lands. Darvall and seven others opposed a proviso that vested rights of occupiers of Crown Lands should be respected. The clauses requiring majorities of two-thirds in both Houses in altering the Constitution were agreed to.[14]

The third reading of the bill was affirmed, 21st December, by 27 votes against 6. Wentworth then carried a series of descriptive resolutions. The bill was an embodiment of the rights for which the Council and its predecessors had

Sir Henry Maine. Governments, in his opinion, should exist and should labour for the good of a community. When they cease to labour for it they become impostures, and right has given place to wrong.

[13] When Wentworth's Constitution Act was (with amendments interpolated in England) legalized, Lord J. Russell still impressed upon the Governor the principle in the text. The government "entertain the opinion in which they do not doubt the concurrence of yourself and the Legislature that the maintenance of those interests is incumbent on the Crown to keep faith with individuals, and incumbent on the Legislature in due execution of its compact with the Crown." The Governor was therefore to reserve for Royal consideration any bill dealing with interests of "present incumbents either in salaries or pensions" unless he should think it right to negative such a bill. Parliamentary Papers, vol. xliii. 1856. Lord J. Russell to Sir W. Denison (20th July 1855). Despatch with Constitution Act, 18 and 19 Vict., cap. 54.

[14] It is gratifying to notice that Lecky, in his great work on modern conditions of the world, says: "One remarkable attempt . . . was made by the great Australian statesman, Wentworth, who, in 1853, introduced into his scheme for the Constitution of New South Wales a clause providing that alterations in the Constitution could only be carried by two-thirds' majorities. Unfortunately the clause miscarried in England." Lecky's *Democracy and Liberty*, vol. i., p. 114.

contended, and when passed into law would redress all the grievances set forth in the Remonstrance of the Council of December 1851. It conferred plenary power of legislation in all matters of local and municipal concernment. It limited to enumerated cases, bearing on the prerogative of the Crown and Imperial interests, the double power of veto found vexatious in the past. It enlarged the basis of popular representation. It established in the colony for the first time an independent judiciary. It abolished the schedules to the existing Imperial Act, and involved "a necessary implication that the Imperial Parliament has no right to tax the inhabitants of this colony or appropriate any portion of its revenues." It surrendered to the Legislature the control of the Waste Lands, subject to the maintenance of rights recognized by law. It gave the Legislature control of all the revenue "from whatever source arising, except that portion thereof which is voluntarily granted to Her Majesty by way of Civil List." It established responsible government, and placed in the hands of responsible ministers the appointment to all offices of trust and emolument within the colony.

"In framing this bill it has been the anxious desire of this House that the Legislative Council and House of Assembly should form as close an approximation as possible to the Constitution of both Houses of the Imperial Parliament; and the whole scope of this measure is to give stability to those British institutions which we have—to introduce those which we have not—to cement that union which now happily exists between this colony and the parent country, and to perpetuate if possible that identity of laws, habits, and interests which it is so desirable to render enduring."

The Governor was requested to represent to the Secretary of State "the large majorities both of the nominated and elected members" by which the bill had "been supported in all its stages, and ultimately passed."

Wentworth was about to visit England. Deas Thomson, after his long labours, required rest. James Macarthur moved that they be empowered to advocate the bill in England; and, if need be, to combat any objections "to it or to the passing of the Act of the Imperial Parliament required to give it validity." By 23 votes against 2 the motion was carried. On the following day (22nd Dec. 1853) Sir C. Fitz Roy congratulated the Council on having

copied as far as possible the institutions of the mother country, which had "achieved for Her Majesty's subjects the most complete system of liberty, consistent with order and good government, which is enjoyed in any part of the world." The House was prorogued, and when Wentworth resigned his seat it was contested by Mr. Parkes and by one of the proprietors of the leading newspaper, the *Sydney Morning Herald*. Parkes, the representative of the *Empire* newspaper, was victorious, with 1427 votes against 779, having received warm patronage from Mr. Darvall.

Neither his own success nor his public averment that in 1848 he and others secured Mr. Lowe's election entirely by means of the votes of working men restrained Parkes from lowering the suffrage. The fund upon which a demagogue draws is unlimited so long as there is a rag of popularity to be run after by demanding power for any of his auditors. Triumphant at his election, and with his old intrigues with Robert Lowe to aid him, Mr. Parkes might not unreasonably hope to counteract in England the moral force which Wentworth had wielded in Sydney. A series of convulsions in Europe prevented attention to colonial requirements. War with Russia was declared in March, when the Duke of Newcastle presided at the Colonial and War Departments, which had been conjoined in 1795 under the strong hand of Pitt's friend, Dundas, and had not since been severed. The war required firmer guidance than that of the Duke of Newcastle. In June the Colonial Department was severed from that of War. Sir G. Grey became Colonial Minister. Mr. Parkes and his friends, by private representations and public petitions, endeavoured to deter Parliament from sanctioning the proposed Constitution for New South Wales. Mr. Lowe presented petitions to the House of Commons from various localities in the colony. Some of them asked the House of Commons to assume "the function of framing a constitution" such as they desired; and it was pointed out in the House of Commons that the "two which had the largest number of names were in a great part signed by the same persons, and in many instances the head of the family had himself subscribed the names of all his children."

Before the bill was submitted to Parliament there had been mutations at the Colonial Office. Mr. Roebuck's

resolution about the war crushed Lord Aberdeen's Administration in January 1855. Lord J. Russell, to escape censure, when Roebuck gave notice of his motion, resigned without acquiring honour. Changing horses in crossing a turbulent river was a difficult task. Lord John was sent for by the Queen, but could not form a ministry. Lord Derby, conscious that his friends were in a minority in the House of Commons, was willing to strive to carry on the Queen's Government at so critical a time if Lord Palmerston and others, who had entered upon the war, would aid him. They declined. Lord Palmerston eventually reconstructed the ministry. Mr. Sydney Herbert went to the Colonial Office, while Lord J. Russell was sent as a Commissioner to Vienna, where he laboured abroad, doing nothing to the purpose, while colonial constitutions were not considered in Parliament. The Draft Bills sent from New South Wales and from Victoria had been deemed to interfere with certain Imperial enactments, in relation to disallowance of bills by the Crown. They had been relegated to the session of 1855, and thus, although the New South Wales bill had been passed in the colony in 1853, it had not been legalized in May 1855, at which date Lord J. Russell signified the Queen's approval of a Constitution Bill which the Legislature in Tasmania passed in November 1854. A South Australian bill was, in May 1855, referred back for reconsideration in the colony if the local Legislature should think it proper to omit certain clauses deemed irregular.

But there were reasons against dilatory procedure with regard to the two gold-bearing colonies. The political power wielded in New South Wales could not be set at nought. Her public men were capable. They had overcome Earl Grey, and would not shrink from encountering Lord J. Russell. It was felt, moreover, that the Home government was bound to give facilities for remodelling the institutions which had been framed before the flood of gold-seekers had burst like a tidal wave upon the land. The latter reason was imperative as regarded Victoria. Her population had increased five-fold in four years. The abasement of law, permitted in 1853, had been atoned for by the firm bearing of Sir Charles Hotham in 1854, but no worthy subject of the Queen could fail to lament the fatal encounter at

Ballarat. There is no political or social blot which an Englishman ought not to be able to wipe out otherwise than in blood. No one could deny that wise change was needed. A draft bill had been passed in the colony in response to Sir J. Pakington's invitation. Sir C. Hotham had urged (Oct. 1854) that "no time should be lost in bringing it into operation." The insurrection at Ballarat did not diminish, but increased his importunity. To govern, as he was asked to govern, with Executive Councillors whom the Secretary of State would not allow him to change, even when they intrigued against him, was a refinement of torture, and involved subjection to blame for misdeeds of others. He warned the Secretary of State that if the new Constitution should not have arrived in October 1856 there would be an excitement bordering on revolution, or the colony would be left without a government. The term of the existing Council would expire at that date. He had been thanked in warm terms, by direct command of the Queen, for the promptness, energy, and prudence with which he had quelled the alarming outbreak at Ballarat. He wrote (April 1855) that though the masses confined their view to the obnoxious license fee, "designing orators and anarchists" had played upon their feelings, had worked them to the desired pitch, and would have been satisfied with "nothing short of the overthrow of the government. . . . A march on Melbourne would have been the result of a victory." Clearly, if the new Constitution, desired by all, would establish order it was the duty of the Secretary of State to procure its enactment.

Two years had elapsed since the invitation of Sir J. Pakington. In March 1854 the local Legislature passed their bill. It was received in England in May, and Lord J. Russell, in explaining to Sir W. Denison the long postponement of the New South Wales bill, pleaded the advanced period of the session at the date of the arrival of the Victorian bill. Thus one year had been lost.

While Lord John was blundering at Vienna, early in 1855, a colonist went thither to urge upon him the danger of leaving the Victorian Constitution in abeyance. The suspension of the conference enabled the noble lord to return to Parliament. It was seen that to remit the

Victorian bill back was impracticable. It was determined to amend it by excision of some of its contents, and to legalize the remainder by an Imperial Act. If such a course could be adopted with regard to Victoria, it was plain that it was practicable with regard to the New South Wales bill, which Deas Thomson and Wentworth were in London to promote. By the necessities of Victoria Mr. Lowe was driven from the standpoint from which he had hoped to thwart Wentworth's bill. It was not to be sent back to the colony for reconsideration. On the 10th May Lord J. Russell introduced "a bill to enable Her Majesty to assent to a bill as amended of the Legislature of Victoria to establish a Constitution in and for the colony of Victoria." The Colonial Act, as amended, was appended as a schedule to the bill. Mr. Lowe, not then a member of the government,[15] denounced the Colonial Bill as *ultra vires* and discreditable. The amended Colonial Bill (he said) was not the bill to which the colonial Legislature had agreed. If the government could amend, so could Parliament amend. Thus they were involving themselves in "a mass of inextricable confusion, difficulty, and anomaly." "But as the case was one of emergency," to prevent delay (and at the same time effectually clog Wentworth's bill), he suggested that a bill might be passed to empower the Governor-General of the Australian colonies to assent to the amended bill in Her Majesty's name; or that Parliament should itself "legislate directly on the subject." His remedies were at least as absurd as the inconveniences to which he objected. To invite the colonies to act through their Legislatures, and then to set aside their work and impose upon them an Act of the Imperial Parliament, was preposterous. To refuse the Queen's assent, and then to delegate to a Governor the power to assent, was idle unless

[15] He became Vice-President of the Board of Trade in August 1855, Lord J. Russell having in the meantime, to avoid censure (on a motion of Sir E Bulwer Lytton) announced his resignation in June, though he retained office until July. The notice alleged that Lord John's conduct at Vienna, "and his continuance in office as a responsible adviser of the Crown, have shaken the confidence which the country should place in those to whom the administration of public affairs is entrusted." Sir W. Molesworth assumed the seals of the Colonial Office in July, but died in October, and was succeeded by Mr. Labouchere.

delay were the object in view; and Mr. Lowe confessed that the case was one of emergency. Moreover, his arguments in the Commons were in flat contradiction to those he had often used in Sydney.[16] Lord J. Russell said that it was not proposed to insert in the amended bill any "provisions which the Legislature of Victoria had not sanctioned." With daring inaccuracy he contended that he only eliminated restrictions upon the power of the Crown. The bill was read a first time.

On the 17th May Lord J. Russell introduced a similar bill with regard to New South Wales. Mr. Lowe assailed it as a "nullity . . . in its present shape it could not stand." The only way to give it vitality would be for Parliament "to act upon its own convictions instead of degrading itself into a mere machine for registering the Acts of Colonial Legislatures." The "nominated chamber was nothing but an iniquitous device of a small oligarchical clique." The clause requiring a majority of two-thirds of each House to effect constitutional changes was a base device to perpetuate an odious system of tyranny.[17] Let the New South Wales bill and the Victorian bill be referred to (that region of delay) a select committee. He spoke "as a witness," he knew the men of the colony, and protested against allowing the House to become the "tool and instrument by which an oligarchical faction in a colony should rivet a galling yoke upon the necks of their fellow-subjects." It was indeed because he knew the men of the colony that he spoke so strongly. He had often winced under the lash of Wentworth, and he thought the hour of retaliation had come. The passionate sympathy which Wentworth had met in

[16] In 1846 he inveighed in Sydney against any interference by the Colonial Office. "If this Council should choose to set aside the Constitutional Act what is that to Lord Stanley? It is the most arbitrary and oppressive invasion of the rights of a legislative body that I ever heard of." In 1848 he denounced Earl Grey's proposals to amend the New South Wales Government, as "accursed—wretched offspring of tyranny—let them take back their scheme amidst shouts of ridicule. . . ." What he thus denounced in the colony in 1848 he proposed to do, when out of the colony, in 1855.

[17] Such was the definition given by Lowe (in the House of Commons, and by Cowper, Parkes, and others in the colony) of the object and labours of Washington, Alexander Hamilton, and their fellow-workers in framing the Constitution of the United States.

Sydney when he presented the New Constitution as his latest legacy to his country had been converted into gall in the breast of his detractor, whose name was branded amongst Australians with the epithets scornfully applied to him by Wentworth on the hustings in 1848. Lord J. Russell hinted that Lowe, who sneered at others as ill-informed, might be "himself too well informed, having taken too warm a part in debates in Australia," and be anxious to use the House of Commons to give effect to views he had contended for in the colony. As to the legal difficulties, the bill had been maturely considered in the Colonial Office, and had been submitted to the experienced lawyer who drafted measures for the government. Then arose a man who had done much mischief to his native country, had goaded others to acts for which they suffered, had been denounced as a traitor by one of the sufferers,[18] and was about to transfer his capacity for intrigue to the ill-fated colony of Victoria. Mr. Charles G. Duffy supported Lowe. He saw in "the two-thirds clause" an odious element of stability. The centre of gravity which Wentworth had designed in laying down the lines of the Constitution was adapted to resist the gusts of passion, or the under-currents of sedition. For that reason it was obnoxious to Mr. Duffy. The great men of America in 1787, tried in a fiery ordeal, had seen that guarantees were needed against hasty exercise of power under influences of anger or discontent. Smaller men were content to be guided. The fifth article of the Constitution embodied the wisdom of Washington, Hamilton, and others. The contemporary "Federalist" commended it on the ground that it "guarded equally against that extreme facility which would render the Constitution too mutable, and that extreme difficulty which might perpetuate its discovered faults." Judge Story in 1851 pointed with pride to the provision as "a bar against light or frequent innovations;" and far from deeming it reprehensible because it rendered changes impossible at the dictation of a mere majority, he looked at a contrary possibility, and contended that there was "no reason to fear that it will produce any

[18] John Mitchell.

instability in the government,"—by the facility it afforded for amendments. Casting his eyes upon institutions in other lands, Wentworth had adopted the provision which had worked so well, and had been so highly lauded in America. With such a provision he launched the ship of the State.

When the ill-fated turret-ship, the *Captain*, was in course of construction some of the more skilful and prudent advisers of the Admiralty warned men in authority that her stability was questionable. Admiral Sir Spencer Robinson, and Mr. E. J. Reed, the Chief Constructor, were unheeded. Mr. Childers, then first Lord of the Admiralty, had a passion for reconstructing departments. When first installed in office (1868) he issued a memorandum for reorganizing the Admiralty; and maugre the forebodings of skilled persons, his arrangements were sanctioned in 1869. He quarrelled with Sir Spencer Robinson, and in July 1870 he got rid of the Chief Constructor. In September 1870 the Queen's subjects were horror-struck at a catastrophe which proved the danger of launching into the storms of life a mechanism devoid of needful stability. The *Captain* foundered off Cape Finisterre; and, of her complement of 500 souls, less than 20 escaped in a boat. Although one of her builders informed the court-martial that "even if he had known that the stability of the ship vanished entirely at an inclination of 54°, he would not have felt at all uneasy," the Court regretted the employment of a ship in which a grave departure from her original design had been committed, whereby her draught of water had been increased, her free-board correspondingly diminished, and "her stability proved to be dangerously small."[18]

The stability which Wentworth had designed for his country found as little sympathy as the warnings of Mr. Reed. When Duffy objected to the requirement of majorities of two-thirds in alterations of the Constitution, Lord J. Russell jauntily said "he had omitted to state that he proposed to give power to the Legislature to make altera-

[18] The fate of an unbalanced vessel, marine or political, was thus described by the gunner of the *Captain*. "When I last saw the ship she was as nearly bottom up as possible." Evidence before court-martial, 27th September 1870.)

tions in itself by the usual majority;" and Duffy proceeded to sneer at the colonial statesmen as intriguers whose success might prevent the immigration of worthier men than themselves. The second reading of the bill was moved (14th June) after the Victorian bill had passed through the same stage. Mr. Lowe moved that it be read a second time that day six months. Lord John had commented on the ability of the debates in the Sydney Council, and Lowe retorted that the members had better have thought less of Burke, Cicero, Plato, and Montesquieu, and more of the colony. He charged with corruption men known to be pure. To pass the bill would, he said, create discord which might "overthrow the Constitution they were asked to pass, together with probably the connection between the colony and England." Mr. Ball, member for the Dublin University, trusting that, whatever complaints might be made of Downing-street, "the time would never come when the colonies would have just cause to complain of the tyranny of the House of Commons," remarked that Lowe had himself advocated in Sydney a nominated House with as much ability as he displayed in the House of Commons in condemning it. By 142 votes against 33 the second reading was affirmed.

Wentworth (whose colleague, Deas Thomson, was absent in ill-health) lost no time in refuting Lowe's arguments. To the plea that the outer population had not sanctioned his bill he retorted—

"Considering that the discovery of gold has induced, for the last few years, a vast amount of voluntary immigration from all nations, and of all principles, and that among them is a very thick sprinkling of democrats, chartists, socialists, red republicans, *et hoc genus omne*, forming altogether a transitory and most undesirable addition to the population of the colony; considering, moreover, that those who were foreigners could not possess the elective franchise, and were not, therefore, entitled by law to a voice in the framing of the Constitution, it must be evident that to allow petitions signed by large numbers of such persons to prevail against the votes of the Legislative Council would be, in fact, to transfer the government of the colony into the hands of the very scum of the colonial population."

He refuted the assertion that the Council did not represent the intelligent and industrious colonists. He denied that an oligarchical clique existed, and defied Mr. Lowe to name the persons composing it. If there was a monopoly

of the Crown lands, it was still open to all who chose to share in it, for millions upon millions of acres could still be had by anyone upon application. But if there were monopolists, the so-called monopolizers owed their chief thanks to Mr. Lowe himself, for though he was not the chairman of the committee whose report led to the existing tenures of Crown lands, it was a matter of notoriety that he took a prominent part in drafting the report, and supported it in the Legislature. The imputation that the Civil List sprang from a corrupt bargain was "false and calumnious." As the originator of the bill, Wentworth repelled the insinuation with scorn. The future salaries paid out of the Civil List would not be received by functionaries who assisted in framing the measure, but by their successors; and the official members had uniformly withdrawn from the committee when the pensions in which they had an interest were considered, and had followed the same course when the subject was dealt with in the House. The imputation was worthy of the man, and "could only have proceeded from a mind strongly tinctured with malice or suspicion." How was it that the lynx-eyed objector found no fault with the much larger Civil List annexed to the Victorian bill? Mr. Lowe had "not lived in Victoria, had no old scores there to pay off, no mortifications and insults to forget, no vengeance to wreak," and therefore the Legislature of that colony might dispose of the money of the people "without reprobation or even comment." After refuting Lowe's strictures upon the electoral divisions of the colony, Wentworth set forth the resolutions adopted by the Legislature, in which the principles embodied in the bill were summed up after its completion. As to the nominee chamber, Mr. Lowe had, a few years ago, strongly advocated it.

"Let him explain, if he can, how it is that one of his mature age and intellect is subject to these perpetual oscillations. The fact is, Lord John Russell hit the right nail on the head the other night. The colony at last became too hot for him, and he could remain no longer. Many of those who were his former associates felt obliged, for reasons to which I need not now advert, to drop his acquaintance. Mr. Lowe has sunk into a mere partisan—the partisan of that democratic faction who, after he had been pretty generally avoided by his equals, did their utmost to conciliate his favour, and gain him over to their views by bringing him in as one of the members for Sydney. He can do no less in return than endeavour to

place those who lent him a helping hand in his extremity in possession of the high places and power of the colony. That is the true object of the faction—who have been at the bottom of all these petitions, the last of which was got up mainly by the Rev. Dr. Lang, of whose objects and those of his party it is only necessary to say that, at a public meeting held not very long since in the city of Sydney, he expressed a hope that he should live to see the day when the Queen's colours should be dragged through the mire of the streets. It is very easy for Mr. Lowe to call the gentlemen of the colony an aristocratic clique. He has no other way of venting his impotent spleen against them. My principal regret is that he has succeeded in inducing Lord John Russell to consent to an alteration in the 42nd clause of the bill, by which it is provided that any changes in the Constitution of the Legislative Council or Assembly shall only be made with the consent of a majority of two-thirds of both Houses. . . . I am not without hope that, on more mature consideration, the 42nd clause of the bill may be upheld in its integrity; feeling no doubt whatever, if it became the general opinion of the colonists of New South Wales, that any change in the Constitution of the nominated chamber was necessary for purposes of good government, that the required majority would be easily obtained by the pressure of public opinion. But one word more. As one of the delegates of the Legislature of the oldest and only colony of Australia in which the representatives of the people have shown an unequivocal desire *stare super antiquas vias*, and to prefer the ancient landmarks of the British Constitution to those American models which the Americans, when they renounced their allegiance to the Crown of England, and declared for a republic, had no alternative but to adopt—I trust I may be permitted, without giving any offence, to express my surprise and regret that the loyalty and attachment of the inhabitants of New South Wales to the institutions of their forefathers should be met by what appears to be a general desire to force upon them, not the American constitution in its purity—for that is incompatible with the authority of the sovereign, and impossible where there is not a federation of States,—but new and untried forms of democracy, of the working of which no sufficient experience has yet been had, but of whose ultimate result—a severance from England—none of the advocates of these changes in the colonies, I believe, and certainly few, if any, sober-minded men there, have any doubt. For my own part, I sincerely hope that these experimental democracies may not prove reactionary on our British institutions, and that the unsettled masses which are always longing for change may not come to the conclusion, sooner or later, that forms of government which are thought good enough for Englishmen abroad might be introduced with advantage at home."

Whether Lord John Russell gave way to Lowe or not in the matter of the 42nd clause, he practically strangled it. The reasons adduced in his despatch to the Governor are disingenuous enough to suggest treachery. He had in May announced his intention to give power to the Legislature to defeat the intention of the framers of the bill. Subsequently Wentworth out of doors, and members in the House, pleaded for the retention of the 42nd clause. For any information required it was easy to appeal to Wentworth or

to Deas Thomson. Yet Lord J. Russell had the insolence to write (although the 42nd clause expressly provided a method for making amendments)[19] that the "framers of the Constitution appear to have omitted altogether any special provision reserving to the future Legislature power to alter" the provisions of the bill except as regarded the constitution of the Council. Therefore he strangled Wentworth's safeguard by empowering the Sydney Legislature to repeal it by a "simple majority." The 4th clause of the Imperial Act (18 and 19 Vict. cap. 54) made it

"lawful for the Legislature of New South Wales to make laws altering or repealing all or any of the provisions of the said reserved (Wentworth's) bill in the same manner as any other laws . . . subject to the conditions imposed by the said reserved bill on the alteration of the provision thereof in certain particulars until and unless the said condition shall be repealed or altered by the authority of the said Legislature."

Thus the safeguards of the 17th and 42nd clauses were annihilated, and an ordinary majority at a casual sitting could repeal any portion of the Constitution. By this provision, Lord J. Russell wrote, "Her Majesty's Government conceive that the purpose of the Council will be most effectually answered, because, if the bill had been passed under their ordinary powers, it is clear that, although they might have imposed these conditions, any subsequent Legislature might have repealed the clauses imposing them by simple majorities." In this way the despatch-writer conceived that the very important purpose would be fulfilled of "allowing full and free reconsideration" in the colony as to the constitution of the Upper House. But it had been the solemn and avowed "purpose of the Council,"[20] which he averred that he wished to serve, to prevent amendments of the Constitution except under the safeguard which had so long existed in America. Whoever wrote it, the despatch was written with a false pen, and the signer must bear the blame.

[19] Vide *supra*, p. 25.

[20] Moreover, the Council had empowered Wentworth to represent their views. *supra*, p. 26; he had represented them, and Lord John, after disregarding them, thought it not unworthy of him to shuffle as described in the text, though he sanctioned in the Victorian and South Australian Constitution the requirement of absolute majorities in effecting changes. See pp. 49 *n.* and 61 below.

In committee on the bill (June) Mr. Lowe made an effort to strike out Lord J. Russell's clause, and intimated that he would erase Wentworth's 42nd clause. Sir J. Pakington, on whose invitation the colonists had prepared their Constitution, pleaded the example of the United States in favour of the provisions in the Colonial bill. Mr. Ball suggested that the wishes of the colonists embodied in that bill should be respected. Mr. Lowe's amendment was lost, but its purpose was served by Lord John's insidious procedure.

To the discredit of the House of Lords it must be told that not a voice was raised there to protest against violation of faith by a government which, after a Legislature had been invited to frame a Constitution, arbitrarily tampered with its provisions. There was one point on which even Lord John was sensitive. He could strain at a gnat as well as swallow a camel. He informed the Governor that the maintenance of interests of existing holders of salaries or pensions was "incumbent on the Crown in order to keep faith with individuals, and incumbent on the Legislature in due execution of its compact with the Crown." Bills dealing with those interests would therefore be reserved unless negatived in the colony.

The 4th clause of the Imperial Act has been described. The measure was short. Its nine clauses repealed some former statutes, kept alive the existing provisions respecting Royal assent or refusal to assent to bills, provided for the future severance of the northern part of New South Wales, and its creation into a separate colony, and prescribed the mode of promulgating the Constitution. Another brief statute (18 and 19 Vict., cap. 56) dealt with the Crown lands. Wentworth's bill had vested their control in the local Legislature, preserving at the same time all existing rights. That provision was not excised by Parliament. In effect the Imperial Statute reaffirmed the same principle. It dealt, however, with all the colonies in Australia and with Tasmania. The Crown retained direct control in Western Australia. Elsewhere the different Legislatures were to acquire control on the promulgation of their new Constitutions; but existing contracts, promises, and engage-

ments were preserved. It is proper to trace here the effect of the clause by which Lord J. Russell "conceived that the purpose (of Wentworth's bill) would be most effectually answered." Elsewhere is described the manner in which Sir W. Denison crushed, in 1855, the efforts of Dr. Lang, Darvall, and Parkes to destroy not only the clauses which retarded rash legislation, but the whole Constitution. When the new Houses assembled in 1856, however, Sir W. Denison's speech proposed to repeal Wentworth's clauses "requiring a majority of two-thirds of the Legislature to effect changes in the system of representation or the principles of the Constitution." The ministry died without passing the necessary bill,[21] although they introduced it on the 7th August; Mr. Charles Cowper, after sharp struggles for office, having formed a ministry, 26th August 1856. He fell in a few weeks, and was succeeded by Mr. H. W. Parker (3rd Oct. 1856). Donaldson, Manning, Darvall, and Mr. John Hay became his colleagues, and Deas Thomson represented the government in the Upper House. It might have been predicted that Darvall would not rest until he had assassinated Wentworth's creation. Yet it might have been hoped that Deas Thomson, a foster-father of the Constitution, would strive to protect it, and that amongst the representative members there would have been sufficient respect for Wentworth to spare his handiwork until at least it had been tried during one Parliament.

But the Assembly was more sedulous about the importance of members than about the interests of the country. A member was assaulted somewhere, and privilege was appealed to. There was also a stir about the projected severance of a new colony from the northern districts, and members were more anxious about boundaries than about the welfare of the people within them. As in Rome,

[21] A bill "to repeal so much of the Constitution Act as requires the concurrence of unusual majorities of members of the Legislative Council and Legislative Assembly respectively in the passing of bills to alter the Constitution conferred by the said Act, or the number and apportionment of members in the Legislative Assembly." When Donaldson introduced it he called it "eminently progressive" (as indeed it was, on a certain road). Cowper accepted it as an instalment: "Of course" he did not oppose it, but reserved his right to propose further amendments "that may suggest themselves."

when the baleful star of Tiberius rose, the great historian tells us—*At, Romæ, ruere in servitium consules, patres, eques* —so in Sydney there was such proneness that it may be doubted whether, even if Lord J. Russell had not been traitorous, there would have been difficulty in obtaining the majorities of two-thirds demanded by the Constitution Act for the attainment of organic change.

The resignation of the Donaldson ministry, and the short interregnum of Cowper's, threw upon Mr. Parker the duty of dealing with the bill; at a time when Mr. Cowper was assailing the ministry because the Treasurer was not sitting in the Assembly.[22] In moving its second reading (30th Oct.), he pointed out that under Lord J. Russell's clause it "could be carried by an ordinary simple majority." One voice reminded members of their rash haste. Mr. Piddington regretted the absence of Wentworth. Had he been present the country "would have had something like consistency from him." Cowper, however, preferred to assail Wentworth's handiwork in Wentworth's absence. He rejoiced that the "interference of the Home Government enabled the House to repeal" the clauses. People out of doors were well aware that they were indebted to the British Parliament for the easy strangling of Wentworth's clauses. Mr. Plunkett did not oppose the bill, but pointed out that the Governor would have to reserve it for the Queen's pleasure. Parkes, unwitting that in a few short years he would confess the errors of his opposition to Wentworth, railed at the necessity to reserve the bill. He would rather have it passed and assented to in the colony, in spite of Lord J. Russell's despatch. Another member pleaded that the 17th and 42nd clauses had not attracted much attention during the debates in 1853, but Wentworth, in moving the second reading, had vigorously defended

[22] On acceptance of office Mr. Donaldson had vacated his seat for the Sydney Hamlets. Cowper caballed with Dr. Lang and others to defeat Donaldson. The party of Cowper and his allies was called "the Bunch." The Campbells of the Wharf (as they were called) were natives: sons of the merchant of 1808. "The Bunch" defeated Donaldson. John Campbell received 870 votes; Donaldson, 691. Electors of the South Riding of Cumberland requested a sitting member to retire in favour of Donaldson. He did so, and warmly supported his substitute, who was returned without opposition on the 4th November;—"the Bunch" finding it useless to put forward a candidate.

them. When the bill reached the Upper House the members were discussing the proposed "dismemberment of the colony" in the north. The final blow to Wentworth's safeguard was to be given by no less a personage than Deas Thomson, who had been deputed conjointly with Wentworth to combat any objections to the Constitution Bill in England. It must have given him such pain to deal so deadly a blow, that the hand of the historian must falter though it dare not refuse to condemn.

No more melancholy instance of the exigencies of party government could be afforded. He stood so high in all men's estimation, that for him to fall seemed to imply that it was no longer necessary for others to be upright. In moving the second reading, he gently pleaded that he had not altered "his opinion, that when the Constitution was once settled it was expedient that some impediment should be thrown in the way of constant changes. Still he did not feel justified in opposing his individual opinion to the general wish." Though he approved of Wentworth's clauses, yet, as they had now two Houses, and "no bill could pass into law without the concurrence of the Council," he did not hesitate "to move the second reading of the bill as a concession to the popular voice."[23]

It is instructive to remark the contradictory arguments by which Wentworth's proposals were rejected or destroyed. When he advocated an Upper House elected from an hereditary order, he was told that it was incongruous with the march of democracy, of which the American public was the great exemplar. When he adopted, and the Council enacted, one of the most important provisions in the Constitution of the United States, he was told that it was un-English. He was neither allowed to build upon the English model nor upon any rational one.[24] Mr. Thomson's

[23] He seems to have repented. In 1872, speaking on the occasion of Wentworth's death, he said :—"The Constitution would have been doubly successful if those alterations had not been made." In 1861 he deplored the "entire deviation" from the British Constitution in adopting manhood suffrage, "which he believed to have been attended with most disastrous consequences to the community."

[24] If it should be thought by any one that harsh censure has been pronounced upon Mr. Robert Lowe's share in degrading the institutions of New South Wales, let the following words, spoken by himself in the House of Commons in April 1866, confirm that censure on his own authority : -

plaint increased the triumph of those who tempted him to his fall. The Nestor of the Council, Alexander Berry, who had sat in the Legislature in the time of Governor Darling, and remembered the days of the French Revolution in 1791, moved that the bill be read a second time after six months, and Judge Dickinson supported him. One member, rejoicing that the bill had been advocated by Deas Thomson, winged an envenomed shaft into Thomson's bosom. Judge Therry supported the bill.

Deas Thomson lamely replied; and Berry, finding that the "general sense of the House was against him," withdrew his motion. Brief amendments[25] were made in committee. On the 20th January the bill was reserved for the approval of Her Majesty. Sir W. Denison, the Governor who reserved it, narrated in a published work his vice-regal experiences, and commented upon local affairs and legislation in various colonies; but was silent upon this surrender of the citadel of the Constitution of the great province of which he was Governor.

In August 1856 he observed that "the whole time of the Legislature" was "taken up by debates and divisions on little extraneous, almost personal, matters." In September he was so unconscious of the import of Lord J. Russell's handiwork that his wife wrote—"not a single business measure of any importance had been brought forward." In the same month he had discovered (during Cowper's administration) that

"men, under the plea of being responsible advisers, advocate measures, the results of which they are too short-sighted to foresee, but for which,

"In the colonies they have got democratic Assemblies. And what is the result? Why they become a curse instead of a blessing. . . . What does this tend to? It tends to anarchy, and from that anarchy these colonies must be relieved They can, however, only be relieved by depriving them of that boon which in an unfortunate hour they received—that of responsible government, coupled with universal suffrage—and by placing their government in some permanent hands, so that the Executive shall not be in a perpetual state of change." When he spoke thus Mr. Lowe must have presumed that other men's memories were as brief as had been his own adherence to principles.

[25] One of them was to insert the words "as amended" after "Her Majesty." In the bill sent from the Assembly the Constitution Bill was alluded to as "assented to by *Her Majesty* under the authority of Parliament." Some supporters of the bill desired not only to amend, but to abolish Her Majesty altogether.

however ruinous, they cannot be punished. Responsibility is, in fact, a name, a clap-trap, a watchword, devised by the unscrupulous as a means of deluding the unwary; meaning nothing but the right of the majority to make fools of themselves without let or hindrance."

It may be thought strange that he was blind to the effect of the revolution which Lord J. Russell's clause accomplished under his own eyes. There was, however, one man in England who knew its meaning, and never ceased to mourn over the tergiversation of his former comrades. It was true that Lord J. Russell had foully enabled a casual majority to do what, under Wentworth's bill, could only be done by majorities of two-thirds. But those who ought to have contended for the Constitution had deserted it. When Wentworth in 1853 called upon the Council "fearlessly, faithfully to perform their duty"—telling them that if they were firm they would succeed, but if they faltered they would be beaten, they had rallied round him. The same men now joined in destroying the special provision made by him to prevent the Constitution from being "set aside, altered, and shattered to pieces by every blast of public opinion." He had put pearls before them, hoping that they were reasonable men. They had joined the Gadarene herd of unreason, and might at any time be plunged into an abyss of confusion.

He had reason to mourn, as he did mourn till the day of his death, the fate which intriguing enemies, crude counsels, and unworthy weakness inflicted upon one of the most sagacious provisions in the Constitution. Had he sought personal aggrandisement he might have been consoled, if not by the proffer of a title which he declined, by the affection and veneration accorded to him, not only by old friends, but by former foes, on his return to his native country. But he saw the signs of decay in the muniments which had been unworthily defaced, and refused to be comforted,[26] though he served his country again when solicited to become President of the Legislative Council, reconstituted in 1861 on a basis of tenure of life-seats.

[26] 1896. Sir H. Parkes (who died in April 1896), by some strange working of vanity, was led to sneer at Wentworth in 1893 for giving "unchecked power" to persons not fit to be trusted with it. The author thought it right to correct such misstatements at the time, and the

Wentworth, while excluding from his Constitution Bill any provisions respecting a General Assembly entrusted with care of intercolonial questions, contended that the

following letter appeared in the Melbourne *Argus* on the 27th January, 1893:—

To the Editor of the "Argus."

Sir,—Perhaps, in most imaginary conversations of the dead, phrases which appear out of place may be seen, but it may be doubted whether anything so grotesquely unfitting has hitherto been ascribed to the departed as Sir Henry Parkes has put into the mouth of Wentworth in an imaginary conversation between Wentworth and Lang in the recently-published *Antipodean*. Wentworth is made to say, "I fear I was a little blind in insisting that unchecked power should be given to our successors—that I did not reflect who they might be."

The truth is that Wentworth's Constitution Bill did provide against unchecked power being given to his successors; and he proved, to the confusion of his opponents, that in that provision he followed the precedent of the Constitution of the United States of America.

In 1853 Sir (then Mr.) Henry Parkes denounced Wentworth's bill as an "iniquitous and fraudulent attack upon the liberties of the people," and Parkes was, in his turn, described by Wentworth as an "arch-anarchist."

It is fair to Wentworth to add that he subsequently said it was "a weak point" in his speeches that he had "taken notice of the calumnies and slanders heaped upon him."

Wentworth carried his Constitution Bill with many of the checks he demanded—notably that which required a majority of two-thirds in both Houses in alterations of the Constitution; and, with that safeguard in it, the bill was put before the English Parliament. Parkes, Lang, Darvall, and others sent to England sundry petitions against the bill, where Robert Lowe (who had quarrelled with Wentworth as he quarrelled with many of his former political associates in Sydney) took up the cudgels against the bill in the House of Commons.

One Charles G. Duffy joined Lowe in assailing "the two-thirds" clause as odious; and Lord John Russell was mean enough to introduce in the Imperial Enabling Bill a clause which strangled Wentworth's safeguard. He did not affect to be influenced by Lowe and Duffy, but said that "he had omitted to state that he proposed to give power to the Legislature to make alterations by the usual majority."

This he induced the House of Commons to agree to, and thus—after the New South Wales Legislature had been authorized to frame a Constitution for the colony, and had formally complied—one of the most important provisions in the Constitution was destroyed because it did not give "unchecked power" to casual majorities in the Parliament of New South Wales.

Wentworth was in England at the time, and published a vehement protest against the change. He urged that the petitions sent to England by Lang, Parkes, and others were in many cases signed by members of "a transitory and most undesirable addition to the population of the colony," and that "to allow petitions of such persons to prevail against the votes of the legislative body would be, in fact, to transfer the government of the colony into the hands of the very scum of the colonial population." Wentworth's protest was unavailing against Lord John Russell's injustice and breach of faith. His safeguard against rash and hasty legislation vanished. His opponents might have been content with the destruction of his handiwork, and might have allowed his reputation to rest in peace.

It might have been hoped that his memory was safe against such insinuations as those now made by Sir Henry Parkes, for that gentleman said, in 1872, in the New South Wales Parliament:—"Of Mr. Wentworth's labours in the Constitution, perhaps I may be permitted to say that I have lived long enough to see the error of some of my feeble opposition to those labours. I have lived long enough to know that in that Constitution he was careful, with the painstaking care of a man having a fatherly regard for his country, to make broad the foundations of it."

It seems that in 1893 Sir Henry Parkes has lived long enough to forget what he said in 1872. Be that as it may, it is not fair for him to put into Wentworth's mouth statements of which the most cursory knowledge of the facts must prove the absurdity.—Yours, &c.,

25th January, 1893. G. W. RUSDEN.

To a friend, who warned the author that Parkes would be severe in reply, the author correctly answered that Parkes would not be so foolish, inasmuch as the facts were too strong for him, and were known to many in New South Wales as well as to the author. The *Times* published a long

creation of such a body was indispensable, and ought not to be delayed; and that the Secretary of State should introduce the requisite measure in Parliament. He strove in England to effect his object. A "General Association for the Australian Colonies" was formed in London. Finding that the government had done nothing to sanction a Federal Assembly, the Association—Wentworth being in the chair—presented a memorial to the Secretary of State in March 1857. They cited Wentworth's report of 1853; they adverted to proofs of the need of a Federal Assembly to deal with lighthouses, tariff, postal, and other questions. Such an Assembly could only be created directly by an Imperial Statute or indirectly by a permissive measure enabling any two or more colonies to enter into confederation. The latter course seemed preferable, and Wentworth, who drafted bills with the ease with which most persons write letters, sent to the Secretary of State a draft to meet the case. There were only five clauses, but Mr. Labouchere shrank from them, and announced that, "notwithstanding its purely permissive character," he could not introduce the bill, although he was sensible of the existing difficulties, and apprehended that they would increase. He inanely hoped that if joint action could not be attained much might be done by negotiation and the embodiment of results "passed uniformly and in concert by the several Legislatures" of the colonies. He would refer the correspondence to the Australian Governors. Wentworth expressed the regret of the Association at the delay involved, and urged immediate reference.

obituary notice of Sir H. Parkes, in which it ascribed to him far more influence than he possessed. In New South Wales he had many admirers, but never commanded respect. In the neighbouring colonies such reputation as he enjoyed was of a similar character. His adroitness in Parliamentary management was recognized by all, and, as he had much to do with making the suffrage universal, his position was for some time very strong. The *Times* correctly remarked that "his Parliamentary success was due in no small degree to the cleverness with which he could detect the moment when, helped by the pressure of public opinion or outside circumstances, he could carry a bill." It also remarks that "his vanity was stupendous."

That he was an able speaker and a hard worker none could deny, and he was candid enough to regret, when too late, his opposition to some of Wentworth's wise proposals.

Thus was thwarted the first effort to federate the colonies of the south, although the scheme was formally submitted to the Secretary of State at a time when no difficulties with regard to Customs revenues had arisen.

Less loyal attempts to combine the colonies were made subsequently. Mr. Charles G. Duffy was welcomed by Dr. Lang as a fellow-workman in breaking the bonds which attached the colonies to the empire. Duffy ostentatiously declared that he remained an Irish "rebel to the backbone and spinal marrow." He stirred in the matter of federation with an ulterior purpose different from that of Wentworth. But the Select Committee he obtained in Melbourne contained members who did not desire a severance from the empire; and the outcome of their labours was a recommendation that there should be an Intercolonial Conference on the subject. Their resolutions were adopted by the Assembly and Council. They were transmitted to New South Wales by Governor Barkly before the Council adopted them, but not before the Council in Sydney, under the guidance of Deas Thomson, had addressed itself to the question. Their report recommended a conference of delegates from all the colonies, and urged that the matter could "not be longer postponed without the danger of creating serious grounds of antagonism and jealousy which would tend greatly to embarrass if not entirely to prevent its future settlement upon a satisfactory basis." The Council adopted the necessary resolutions, but the Assembly was dilatory. Knowing the relations between Duffy and Lang, some members doubted the loyalty of the movement in Victoria. Some of Wentworth's old antagonists were jealous of a project sanctioned by him. The subject was serious, and seemed to require a conference between the two Houses. After conference a proposed joint address in favour of federation was set down for consideration when a sudden prorogation, resorted to by the Cowper Ministry in December 1857, cut short the deliberations of the Legislature.

It is needless to trace the formation of the Constitutions of the other colonies so closely as in New South Wales, but a brief description is necessary. Mr. Latrobe invited the Legislative Council of Victoria (Aug. 1853) to accept Sir J. Pakington's invitation, and having the advantage of the

labours of Wentworth's Committees of 1852 and 1853, the members of the Council addressed themselves to their task in September. On the motion of Mr. Foster, the Colonial Secretary, the subject was referred to a Select Committee.

The Select Committee contained himself, Mr. Stawell, Mr. Childers, the Speaker, Dr. Palmer, Mr. Haines, Mr. O'Shanassy, Mr. Greeves, Mr. Miller, Mr. Goodman, Mr. William Nicholson, Mr. Smith, and Dr. Thomson. They resolved that there should be two Houses, both wholly elective. In the main their recommendations were adopted in the following form:—The Upper House members, in order that they might be removed from any sudden "impulse of popular feeling," were elected for ten years, but were to go out in rotation of periods of two years." The provision that the Upper House "never should be dissolved" would secure experience, while the rotation would afford opportunity to the electors to "infuse new men and principles into the House, thereby preserving it in harmony with any abiding change in the circumstances of the country." The duration of an Assembly, as in Sydney, was limited to five years. The freehold qualification of an elector for the Council was to be valued at £1000, or to produce an income of £100 a year. Graduates of universities in the British dominions, barristers, solicitors, medical practitioners, officiating ministers of religion, retired officers of the army and navy, were to have the franchise. Wentworth's provision for the suffrage for the Lower House was £10 household, as already in force. The Committee recommended for Victoria, and the House adopted, a reduction to £5. They also gave a vote to holders of miners' rights. In Sydney miners were not invested with such power, unless possessed of the legal qualification in common with other persons. There were more freed Tasmanian convicts at the Victorian goldfields than elsewhere; but it was resolved to give them control over the lives and fortunes of the unconvicted. Provisions respecting Royal Assent to bills were formally moved in the Victorian Committee by Mr. Childers and others, as though they were original propositions. Though they would not be guided by Wentworth's wisdom, they profited by his labours. A deviation in one particular deserves remark.

In Sydney the Upper House was merely barred from originating appropriation or tax bills. There was no limitation of the power to amend them. In Victoria it was provided that all such bills "shall originate in the Assembly, and may be rejected, but not altered, by the Council."[27] It will be seen that, in spite of these terms, the Assembly afterwards asserted that the Council was not intended to have power of rejection. So little regard do men, grasping at power, pay to laws which they dislike.

The constitution of the Consolidated Fund, the charges thereon, the review and audit of expenditure, were transcribed from Wentworth's bill. The assumption, for "the Legislature," of control over the waste lands of the Crown, including all royalties, mines, and minerals, and the guarantee for fulfilment of existing contracts by or on behalf of Her Majesty, were copied from the Sydney measure; but a proviso guaranteeing vested or other rights which might have accrued under the Orders-in-Council, "within or without the settled districts," found no counterpart in Victoria. Many were determined not to respect these rights, whatever they might be. Captain Clarke, the Surveyor-General, was violating them by sales of land. The true remedy which Mr. Latrobe had recommended—the promulgation of Orders adapted to the colony—found no favour. The Duke of Newcastle's shuffling despatch enabled the Survey Department to shuffle; and it shuffled. Land was put up for sale, licensed occupants procured it at the upset price for themselves, or employed a low class of brokers to bid for them at auctions. The brokers levied blackmail by threatening to oppose the pastoral tenant if he should decline their services. They arranged with one another so that they might defraud the revenue by stifling competition. The Survey Office and the public were aware of the process, but it went on, and land was sold in blocks at £1 an acre, which, judiciously placed in the market, would have sold at from £1 to £6. Under such circumstances the adoption of Wentworth's proviso would have been inconvenient. Darkness rather than light was needed for public and private proceedings.

[27] See below, Chapter xviii.

A very significant deviation was made from the lines laid down by Wentworth with regard to placemen. He barred from the Assembly all but the few officials required to administer responsible government. Members in the Victorian House, and in the government, alive to the loss of influence which such a course might entail, provided that any member accepting an office of profit should be eligible for re-election.

By a want of foresight, the clause defining the responsible officers who might sit in Parliament was so framed that it did not in plain terms enforce the intention of the House. To facilitate, or rather to make practicable, responsible government with two elected Houses, it was enacted that of "the persons for the time being holding such offices four at least shall be members of the Council or Assembly." But it was not stated in the letter that at least one or two should be in each House. The consequence was that the spirit of the law was violated at an early date; and trivial as the omission might seem at the time, it was fraught with innumerable evils.

The Victorians had not in this matter the advantage of any clause in Wentworth's bill. As the Upper House in Sydney was nominated, no similar difficulty could exist there; and no beacon being erected by the Sydney engineers, the Victorian pilots steered upon a rock which common sense might have avoided.

The requirement of a majority of two-thirds of both Houses to make amendments in the Constitution was adopted by the Select Committee, but was exchanged afterwards in the House for a clause requiring an absolute majority of the members of each House.[28] The House laboured long, and it was not until the 25th March 1854 that Mr. Latrobe was able to reserve the bill and send it to England. At the same time, to guard against delay in enfranchising rioters at Sandhurst and elsewhere, Mr. Latrobe sent home a separate bill to extend the franchise to licensed gold-diggers. His advocacy of the measure was to some extent misleading, though not untrue. "As

[28] Though Lord J. Russell abrogated Wentworth's two-thirds clause, he did not strike out the absolute majority clause in the Victorian bill. It was not reason, therefore, which guided him.

persons of this class now form so large a proportion of our population, and contribute so much to our revenue, the propriety and necessity of their being fairly represented in the Legislature has been fully recognized." A few months previously he had seriously declared that the direct expenditure caused by the goldfields from January to July 1853 exceeded £600,000, while the revenue from gold and from escorts was £474,000. The indirect expenditure so caused in the same period was, he said, enormous. If profit to the revenue was to give the only ground for enfranchisement, it was clear that no claim could be put forward by the costly miner. The folly was in not encouraging settled habits at the goldfields, and not conferring votes on dwellings or improvements of certain value. A measure to effect such a purpose would have enfranchised the industrious without giving power to the idle or dissipated.

The late date at which the bill was received in England rendered it, in Lord J. Russell's opinion, impossible that it should be dealt with by Parliament in 1854. It was pointed out in August 1854 that the Constitutions received from New South Wales, Victoria, and South Australia contained provisions which it required an Imperial enactment to sanction. The fact was well known in Sydney, and therefore in 1852 Wentworth had drafted the requisite Imperial enactment.[29] The Secretary of State preferred to deal in another manner with the bills. But the delay involved was serious. Sir C. Hotham earnestly implored that there might be no delay in applying the new machinery of government. Rabid writers suggested that he should set aside considerations of the Queen and of the Empire, and proclaim the new Constitution unlawfully. If not, the people ought to do so. One person who urged the Governor to act independently of the Crown was Mr. H. S. Chapman, whose association with Papineau in Canada perhaps inclined him to prefer revolution to law. He had migrated to Victoria when Sir W. Denison permitted him to take leave of absence in order to escape dismissal from office in Tasmania. There was a general anxiety lest the new Constitution should not be ratified before the termination in

[29] New South Wales Parliamentary Papers, 1852.

1856 of the existing House. Some believed that revolution would ensue unless existing arrangements could be modified at once. It was true that Sir C. Hotham[30] had put down rebellion at Ballarat; but it was equally true that—when rebels had been tried—jurymen, metropolitan and suburban, had acquitted them in compliance with, if not in obedience to, shouts in the streets and dictation by the press. The Legislative Council took up the matter.

A Committee was appointed (13th Oct. 1854) to prepare an address, praying that Her Majesty would cause the New Constitution Bill to be laid before Parliament "with the least possible delay." On the 14th November, while affairs were seething at Ballarat, and a portion of the Melbourne newspaper press was trumpeting sedition, the address was adopted by the Council. It prayed that, whatever might be done with regard to other proposed Australian Constitutions, the bill for establishing the Constitution of Victoria might, without delay, be passed into law. Before the prorogation Mr. Chapman gave notice of his intention to move, at the next session, an address calling on the Governor "to give his assent to the Constitution Act in the name of Her Most Gracious Majesty." Mr. O'Shanassy saw the folly of asking the Governor to do what was expressly forbidden by law. He proposed a departmental remedy, and gave notice that he would move an address, calling upon the Governor, "on behalf of the inhabitants,"

[30] Sir Charles Hotham well knew the thorns he stood upon. Speaking of the risk of long delay in inaugurating the Constitution, he said: "I at any rate should not survive. My present work is more than I can continue, and to prolong it, as it would be increased, would put an end to my share of duty very quickly." A paper was presented to him, showing that there was a legal alternative preferable to Mr. Chapman's demand. Mr. Chapman was not over-nice in his methods. In January 1855, being then in view as counsel for prisoners arrested at Ballarat, he alleged, under the signature of "C" (freely claimed by him), that the proclamation of martial law at Ballarat was plainly illegal, because an Act of Parliament was requisite in Ireland in 1798 to enable the authorities there to proclaim it. Unfortunately for him a letter was at once written to show that in the very Act which he had cited were these words: "Provided always, and be it declared and enacted, that nothing in this Act contained shall be construed to take away, abridge, or diminish the acknowledged prerogative of His Majesty, for the public safety, to resort to the exercise of martial law, against open enemies and traitors." Mr. Chapman was equally untrustworthy as sworn adviser to Sir W. Denison, or volunteer dictator to Sir C. Hotham.

to establish "an enlightened system of responsible government," and pledging the Council to make equitable provision for any officers who might be displaced by the new system. Sir C. Hotham did not heed Mr. Chapman's proposition. He required no instructions as to his duty to conform to law. His hesitancy was whether he ought to accept in all cases the doctrines imposed upon him as law by others. He wrote (27th June 1855) that his law-officers advised that "no legal objections exist to the adoption of the change recommended" in Mr. O'Shanassy's motion. Constitutional objections they did not weigh. There were, however, special difficulties in Victoria which made manifest the absurdity of the motion. Victoria had, in response to an invitation, passed a bill to provide for responsible government under certain stipulations. The proposition of Mr. O'Shanassy was to scatter to the winds all the stipulations to which the colony was committed. His particular provision for "the officers of government" compelled to retire was perhaps pleasant in their eyes; but though just in itself, it contained no guarantee for the public, who had no interest in giving larger powers to a single House of which a third was nominated by the Crown. Sir C. Hotham urged that it was highly important to grant constitutional government to the Australian colonies. "Popular anger would then be directed—not against the connection with the old country, or against the Governor—but against their own chosen government." He asked the Colonial Office when the Constitution might be expected, and whether in the event of delay the Home Government would sanction the object of Mr. O'Shanassy's resolutions. No answer was needed. The Constitution Act had been sanctioned in England before the Governor's despatch arrived there.

It is unnecessary to recapitulate the passing of the Victorian Bill in the Imperial Parliament. The encounter between the military and the dupes of the disaffected at Ballarat disarmed the opposition, and though some provisions were distorted pictures of the features of the New South Wales Bill, Mr. Lowe and others did not seriously obstruct the measure, although they must have known that its passing would render it almost impossible to arrest

Wentworth's bill. The Secretary of State had previously (Feb. 1855) intimated that the Queen had assented to the bill for extending the elective franchise which had been passed in Victoria. In March 1855 he informed the Governor that he hoped, at "a very early period," to submit the Constitution Bill to Parliament, and that Her Majesty had "very graciously received the address of the Council." On the 20th July Lord J. Russell transmitted the Constitution Statute (18 and 19 Vict. cap. 55), with the Victorian Bill (as amended) forming a schedule to the statute. He wrote that the Ministry had preserved, as far as they could, the form as well as the substance of the Colonial Bill. The provisions purporting to control the reservation and allowance of future measures were struck out because "they would have fettered the supreme executive authority in a manner wholly inconsistent with the preservation of the general interests of the empire." With regard to holders of salary or pension, they were protected by the condition "that enactments touching the civil list should be reserved for Her Majesty's pleasure." Should that general condition be at any time repealed, the Governor would "continue to reserve for Her Majesty's pleasure any bill which may affect those interests to maintain which the faith of the Crown is pledged by the transactions which have resulted in the present measure."

The Legislative Council of South Australia in 1853 consisted of eight nominated and sixteen elected members. Governor Young, in opening a session, announced that he had caused bills to be prepared with a view to the introduction of responsible government in compliance with Sir J. Pakington's invitation. A nominee Upper House was to have life-tenure of seats. An Assembly, elected for three years by a low suffrage, was to have the same control over revenue and expenditure as that possessed by the House of Commons. On the 29th September a bill was passed. Sir Henry Young was advised that it provided the "identical form of constitution" which Sir J. Pakington and his successor had commended to the colony. The adviser was the Advocate-General, Mr. R. D. Hanson. Wentworth's draft bill of 1852 was followed in many particulars; but other provisions were also made. The only special privilege

conferred on the elected House was, as with Wentworth, the origination of appropriation and tax bills. The South Australian measure restrained the Governor from assenting to any bill lowering the price of land below £1 per acre, or diverting one moiety of the Land Fund from immigration, the benefit of the aborigines, and the construction of roads, bridges, and public works. The Upper House was to be nominated for life, and to consist of not fewer than twelve members. The proposed suffrage for the Assembly was a reduction from the existing qualification of freehold estate from £100 to £20, and of household qualification from £10 to £5. The duration of the Assembly was to be three years. A new principle of enlarging the Assembly, proportionately with the increase of population, was adopted. Commencing with 36 members, the House might attain a full number of 72. Like Wentworth's, but unlike the Victorian bill, the South Australian barred the House against placemen. Unlike the other bills, the South Australian measure included the provisions necessary to an Electoral Act and the conduct of elections.

To effect constitutional changes the Assembly might (clause 40), after a lapse of nine years, by a majority of not less than two-thirds repeating their prayer in two sessions —the Assembly having been dissolved in the interval between the two addresses—pass a bill to make the Upper House elective. The bill was then to be reserved, and if it should receive Her Majesty's assent, was to be as valid as if it had passed both Houses in South Australia. As in New South Wales and in Victoria, the independence of the Judges of the Supreme Court was secured during good behaviour, and it was provided that no differential duties might be imposed on like articles imported from different countries. A Civil List was granted by a separate Act. It provided for the salaries of the Governor, the Judges, and some chief officers, and awarded compensation to the extent of four years' salary to five officers on their removal from office by the operation of the Constitution. Irrespective of this compensation, the annual charge was £18,000. There was no provision for public worship. Colonel Robe's disagreement with a majority of the colonists on the subject of religious endowments had never been forgotten.

The last clause of the bill suspended its operation until, by the repeal of the Imperial Land Sales Act (5 and 6 Vict. cap. 36), the control of the lands should be vested in the Colonial Legislature; but there was a proviso that all contracts or engagements made by or on behalf of Her Majesty under the Act should be fulfilled. The heart-burnings engendered elsewhere by Earl Grey's Orders in Council had no place in South Australia. Sir Henry Young (Nov. 1853) hazarded a prophecy that, under responsible government, "changes in the Colonial Ministry will be very unfrequent for years to come."[31] But in January 1854 he reported much opposition to the reserved bills. A petition from five thousand persons remonstrated against a nominated Upper House, and against the compensation awarded by the Civil List Bill.

In September 1854 the Legislative Council assailed the accuracy of the Governor's despatches descriptive of the passing of the Constitution Bills. He had reported that "the proposition to establish an elective Upper Chamber was shelved by a majority of eight elective members." For three days the matter was hotly discussed. The Governor frankly admitted that there was a defect of precision in his despatch. "The difference between fifteen and seven was then described to be a majority of eight elected members; whereas a more precise description would have stated it to be a majority which included eight elected members." But the souls of Messrs. Kingston, Angas, Bagot, Dutton, and others were vexed. The Council adopted addresses denouncing the written "compromise," in terms of which some elected members had agreed to support a nominee Chamber.

Minor matters of personal interest seemed to engross as much attention as constitutional principles. Sir H. Young, whom the Council had sought to drag into the strife, was not doomed to continue in it. He had been Governor for the full term usually allotted; and when Sir C. Fitz Roy, after a still more prolonged government in Sydney, was succeeded by Sir W. Denison, Sir H. Young was transferred to Tasmania, where Sir W. Denison's term had also been prolonged. It devolved upon Lord J. Russell to instruct the

[31] The first Ministry was formed in October 1856. In October 1877 the thirtieth Ministry had been formed.

new Governor, Sir Richard Graves MacDonnell. A scholar, a barrister, a chief justice at the Gambia, and subsequently Governor there and at St. Lucia, and at St. Vincent, Sir R. MacDonnell might be deemed well armed for his labours. He was informed[32] (4th May 1855) that the Secretary of State was convinced that Sir H. Young and his advisers were anxious to do their duty. Lord John would not further advert to the "questions raised as to the motives under the influence of which certain provisions of the bill" had been brought forward. He accepted the result that the local Legislature desired to reconsider the subject. No bill would, therefore, be submitted to Parliament to give validity to the semi-animate product of past labours. The Governor would consider whether fresh consideration should be preceded by a dissolution. Meanwhile it was intended to repeal the Waste Lands Acts, and their repeal would take effect in South Australia from the date of the proclamation there of a new Constitution approved by the Queen. Sir R. MacDonnell's Council was convened for the 7th August 1855, when tidings were received in the colony to the effect that the Royal Assent would not be given to the Constitution Bill then in England. He further prorogued the House in order that he might peruse his instructions presumed to be *in transitu*. He invited members of the Council and principal officers of the colony to a banquet on the intended opening day, and announced his views to his assembled guests. Inconvenient as it confessedly was to leave undone the ordinary business of a session at that season, he intended to dissolve. "He alone was solely and entirely responsible for that course." His speech, though like Banquo's ghost it rose to push honourable members from their stools, was profoundly digested. Mr. G. F. Angas earnestly appealed against the Governor's decision. On the 11th August the Governor received Lord John's May despatch. On the 14th he courteously replied to Mr. Angas, defended his own views, and added: "You will not be surprised to learn that (holding such views) I am about to give orders for issuing a proclamation dissolving the present Council." He dissolved it on the 15th. The body which had been thrice convened for despatch of

[32] Parliamentary Papers, vol. xliii. 1856.

business was thus itself despatched before it could consider its position.

Before Sir R. MacDonnell left England he had proposed that the South Australian bill should be amended in Parliament by excision of the clauses which infringed the Royal prerogative, and by providing that the power of the Assembly to convert the Council into an elective House should be made immediately available instead of being postponed for nine years. After arriving in the colony he thought that such a compromise would have been accepted there with complete satisfaction. He underrated the restlessness of the time, and the effects wrought upon men newly invested with authority. The remission of the question to the colony took him "by surprise."[33] But he devised new measures. He imagined that the country was "inclined to advocate a single Chamber in preference to two, if it could be constituted free from nomineeism." He saw obstacles to the introduction of responsible government in the community. No leader could obtain "requisite weight for his position;" the country was not (he believed) prepared to see the Queen's representative stripped of "all influence in a community too small to permit his maintaining that dignified neutrality which Lord Elgin justly described as his proper position between the great contending parties in Canada."

One "incomprehensible mystery" to him was the "illiberal spirit" shown towards the principal officers for whom compensation had been provided in the abandoned bill. He addressed himself, with his Executive Council, to the task of framing a new bill. On the 17th August he promulgated his scheme—viz., a single Chamber consisting of forty members, thirty-six elected and four heads of principal Departments, the Colonial Secretary, the Advocate-General, and two others to be afterwards determined. It was intended, but not published at first, that one-third of the thirty-six elected members should be chosen by "a highly qualified constituency."[34] The duration of the

[33] Parliamentary Papers, vol. xliii. 1856. Sir R. G. MacDonnell to Lord J. Russell, 22nd August 1855.

[34] Parliamentary Papers, vol. xliii. 1856. Sir R. G. MacDonnell to Lord J. Russell, 22nd August 1855.

Assembly was to be five years, and there was to be no special qualification for members. "Tenure of office by government officers having seats in the Assembly to be the same as at present. No Civil List except to secure the salaries of the Judges and the four government officers holding seats in the Assembly. Ample power to be reserved to future Legislature to alter the details of such bill, or to effect any other change in the proposed Constitution, and resolve the single Chamber into two."

The last clause in this draft notified that, although a single Chamber, constituted as proposed, would "require an Imperial Act to enable the Royal Assent to be given to it," the Governor hoped the new House might meet on the 9th October, and create a fitting Constitution in six weeks. The bill could then be ratified in England in the ensuing session of Parliament.

For Tasmania already two Houses had been provided. Bills were before Parliament to give vitality to the Constitutions locally prepared for New South Wales and Victoria. Responsible government would exist in all the colonies except South Australia and Western Australia. The "government notice" of the 17th kindled indignation. The Governor published an explanatory memorandum (18th Aug.). Defending his proposals, and deprecating intrigues for office, he said: "If, however, as is probable, no alteration of the Constitution will satisfy the country, save one entailing a change of heads of departments as implied by the ordinary meaning of responsible government, the Governor has no mission to withhold such change. . . ."

The leading newspaper "doubted" whether responsible government would "lead to a scramble for office," and hinted that colonists knew better what was good for them than could be known by a Governor who had been "a few weeks in the colony." Sir R. MacDonnell transmitted the hostile article to Downing-street, but remarked that the writer had erroneously treated the four officials as the "only conservative element in the proposed Assembly—passing over the twelve members elected by a highly qualified constituency." While apprising the Secretary of State of what had transpired (up to 22nd Aug.), he observed

that if, contrary to anticipation, the colony should not strongly support his scheme, it was the intention of himself and his advisers to propose, *mutatis mutandis*, a Constitution similar to the one already granted to Tasmania. Their weapons were numerous, and of many kinds. When he opened the newly-elected House in November, the Governor admitted that he had no reason to imagine that a single Chamber, "though till recently supposed to be almost universally popular, would now count many supporters." A new bill was forthwith submitted by the government, with the declared intention[35] "to embody in the measure such principles as appeared to have been most distinctly avowed by the electoral constituencies." Two elected Chambers were therefore recommended. The government proposed that they should be elected by one constituency of a composite character as representing various interests, or possessing educational qualification. Residence for two years was to precede electoral enrolment. It was also proposed to qualify the influence of mere numbers in apportioning representatives in the Upper House. For the Lower, having secured a trustworthy constituency, it was proposed to allow numbers such preponderance that the county of Adelaide (which contained two-thirds of the population of the province) would have returned nearly two-thirds of the members. It was to return nearly a third of the members of the Council. The House rudely snapped the threads woven by the government. Mr. G. S. Kingston, a hero of opposition in 1853, resumed his armour in 1855. On the motion of the second reading of the bill (20th Nov.) he categorically demanded responsible government; manhood suffrage for the Lower House qualified by necessity for enrolment for six months in a district; an Upper House elected by "all the electors in the colony voting as one district," the members to be elected for terms not exceeding nine years, and a portion to retire by rotation every three years; a term of five years as the duration of the Assembly; and vote by ballot in all elections. Though his amendment was withdrawn, most of his demands were enforced upon the government in

[35] Sir R. G. MacDonnell. Despatch, 4th January 1856.

committee. An amendment providing that appropriation and tax bills should originate only in the Lower House was carried by a bare majority (11 against 10). The suffrage for the Upper House was conferred on freeholders of the value of £50, leaseholders of the annual value of £20, and householders of £25 annual value. The number of the Council was fixed at 18. The duration of the Assembly was lowered from five years to three. Its numbers were fixed at 36. The only qualification required for an elector was previous registration on an electoral roll of a district. The South Australians, like the Victorians, did not provide by the letter of their law that a Ministry should, *ex necessitate*, have at least one responsible Minister in each House. But though the blunder caused inconvenience the disastrous consequences suffered in Victoria were not entailed by it.

A provision, which was to be prolific of ministerial changes, made it unnecessary for holders of specified ministerial offices to recur to their constituents on acceptance of place. The natural consequence ensued. Ministers by escaping an appeal to the country did not gain the ratification and strength which a successful appeal would have conferred. What was intended as a security became a weakness; and ministerial changes were multiplied.[36]

The Civil List was, in 1855, made part of the Constitution Bill. It provided pensions for the four officers liable to loss of office by the introduction of responsible government. The independence of the Judges and their salaries were secured as in the other colonies. The Constitution Bill was reserved (4th Jan. 1856) for Her Majesty's pleasure. The electoral provisions necessary were not (as in 1853) embodied in the Constitution of 1855. Sir R. MacDonnell assented on the spot to a separate bill. He viewed with misgiving the fact that the county of Adelaide would return about two-thirds of the members of the Assembly; and wondered at the "extraordinary provision" (sec. 52)

[36] Todd ("Parliamentary Government in the British Colonies, 1880") did not fail to observe this result. "The experiment has not succeeded. By removing an obvious impediment to frequent ministerial changes, it has fostered the element of instability, which is one of the most serious evils incident to parliamentary government" (p. 47).

that no candidate for either House should personally solicit votes, or "attend any meeting of electors," under the penalties attached to bribery and corruption. For the Upper House no electoral divisions were needed, as the colony formed one district. The Colonial Office did not interfere in any manner. When Sir R. MacDonnell reported his plan for escaping the inconveniences of responsible government in so small a community, Mr. Labouchere (20th Dec. 1855) recorded officially the fact that the government in England were "no parties to such a deviation from what was originally intended." On the 19th July 1856 he transmitted to the colony Her Majesty's Order-in-Council (20th June) assenting to the Constitution and Electoral Bills.

The censure passed in these pages upon Lord J. Russell's mode of defeating Wentworth's proviso as to majorities needful to effect organic changes is justified by the fate of the South Australian bill. Sir Alexander J. E. Cockburn[37] was Attorney-General, and Sir R. Bethell was Solicitor-General,[38] when the New South Wales, the Victorian, and the South Australian bills were considered in England. The latter made it unlawful to present for the Royal Assent any bill altering the constitution of the Council or Assembly, "unless the second and third reading of such bill shall have been passed with the concurrence of an absolute majority of the whole number of the members" of each House. The clause was no bar to the Royal Assent. There was no Robert Lowe deputed to thwart in England the wish of the South Australian Legislature. The government was not in 1856 quivering as Lord John had quivered in 1855. Peace was established. But the facility with which, under advice of the same law officers, that was enacted for South Australia which Lord J. Russell had destroyed by Imperial legislation for New South Wales, justifies reprobation of his faithless despatch to Sir W. Denison.

In dismissing this subject it may be proper to observe that Lord John escaped notoriety at the time of his act.

[37] Afterwards Lord Chief Justice of the Queen's Bench.
[38] Afterwards Lord Chancellor and Lord Westbury.

In May's "Constitutional History of England," it was noted that by the Imperial Statute of 1850 (13 and 14 Vict. cap. 59) "powers were conceded to the Governor and Legislative Council of each colony, with the assent of the Queen-in-Council, to alter every part of the Constitution so granted." The learned historian did not dwell upon the subsequent mutilation of Wentworth's bill; but added,

"There could be little doubt that the tendency of such societies would be favourable to democracy; and in a few years the limited franchise was changed, in nearly all of these colonies, for universal suffrage and vote by ballot. It was open to the Queen-in-Council to disallow these laws, or for Parliament itself to interpose and suspend them, but in deference to the principle of self-government, these critical changes were allowed to come into operation."

If Lord John's interference with the principle of self-government (when he mutilated Wentworth's bill) eluded the notice of an able historian who was clerk to the House of Commons at the time when that interference was sanctioned by the House, it might charitably be hoped that members were ignorant of what they were doing when they lent themselves to destroy the element of stability provided by the New South Wales clauses, were it not that the members owed a duty to their fellow-subjects. Colonists had been invited to pass a measure. They passed it. The House of Commons under Lord J. Russell's guidance mutilated it. The sufferers are gravely told that they themselves were guilty of the act by which they suffered. It is hard for him, for whom a wholesome medicine is prepared by his proper adviser, to see another person change the medicine which the helpless patient is compelled to take. It is harder still for the subject of so vile an experiment to be taunted for the poisonous nature of the potion forced upon him. Such, nevertheless, was the fate of New South Wales.[39]

In Tasmania the Legislative Council constituted in 1851, under the Imperial Act (13 and 14 Vict. cap. 59), had little difficulty, under the capable Francis Smith, the Attorney-General, in framing a new Constitution, when after the discontinuance of transportation by Sir J. Pakington the offer

[39] See above (p. 25 *n.*) Mr. Lecky's opinion with regard to Wentworth's proposals.

of responsible government was (30th Jan. 1854) extended to the island by the Duke of Newcastle, on condition that it would follow the example of New South Wales in granting a Civil List, and making suitable and liberal provision for "military as well as civil expenditure." But the Legislative Council had in 1853 recommended an Upper House returned by the whole colony as one electorate, on a freehold suffrage of £25 annual value.

The Secretary of State, Sir G. Grey (3rd Aug. 1854), in reply to the Governor's advocacy of an elective Upper Chamber, stated that the government did not desire to urge upon any colony the adoption of a nominated House, as had been inferred from former despatches.

"Provided the Legislative Council is so constituted as to possess the respect and confidence of the community, and at the same time to be less directly liable than the Assembly to popular impulse, and to be capable of acting as a salutary check against hasty legislation, the particular mode of constituting it is not a matter of primary importance, and they do not therefore feel it necessary to insist on its being nominated by the Crown."

He pointed out that, to ensure the Royal Assent, all matter requiring aid from an Imperial Statute should be avoided. Long before the despatch was received the local Legislature was engaged in framing a Constitution. Sir W. Denison recommended[40] that the electoral suffrage for the Council should be higher than that for the Assembly (which he assumed would be maintained "at £10 household occupation, which is in fact universal suffrage"), that each elector should have but one vote, and that the colony should form one electorate.

The Select Committee had reported a bill (29th Sept. 1854) which contained matter involving legislation in England. On receipt of Sir G. Grey's despatch, as to the necessity to avoid such matter, the bill, already read a second time, and well advanced in Committee, was recommitted, and the questionable clauses were expunged. Consequently the Tasmanian bill received the Royal Assent before it was given to any other Constitutional Bill passed in Australia. It established two Houses. It enabled the

[40] Parliamentary Papers, vol. xxxviii. 1855. Letter to the Speaker (Richard Dry), 27th April, 1854.

Governor and the existing single Chamber to constitute by a separate Act the electoral districts for the new Houses, and to enact all requisite ancillary provisions. The proposed suffrage for the Council was composite as in Victoria. Freehold of £50 annual value, a University degree, professional qualification as a lawyer or a medical practitioner, or the fact of being an officiating minister of religion, or a retired officer of the army or navy, conferred a vote. The £10 household suffrage was retained for the Assembly. Freehold of the clear value of £100, a depasturing license of the amount of £10 on a lease having three years to run, a salary of £100 a year, and all the professional qualifications which conferred a vote for the Council, gave also a vote for the Assembly. An oath of allegiance was to be exacted from all members. A Civil List provided for the salaries of the Governor, the Judges, and a few officials. It allotted £15,000 towards public worship. It gave compensation to the Colonial Secretary, the Attorney-General, and the Colonial Treasurer, on "loss of office on political grounds," to the amount of five years' salary in each case. Appropriation and tax bills were to originate in the Assembly, but there was no limitation in the powers of the Council in dealing with them. The two Houses were to "have, and exercise all the powers" of the former single Chamber.[41]

There was no stipulation for the independence of the Judges; but an Act to provide pensions for them had been passed earlier in the year. Nor was it provided that all appointments in the public service[42] should be made by the

[41] This equal power in finance (except as to initiation of taxation) led to more mutual forbearance than has existed in Victoria, where the Council was specially debarred by the Constitution Act from amending money bills. In Tasmania there have been brief inter-cameral disputes, when the Lower House, spurred to demand the license claimed in Victoria, denied the constitutional rights of the Upper House; but the latter Chamber maintained its position, and mutual forbearance has ensured amicable compromise. When neither House can exercise tyranny common sense usually prevails.

[42] The Council repented this abstinence. In September 1855 they prayed Her Majesty to direct that all appointments from England to "this colony shall for ever cease." Mr. Labouchere thought their prayer too comprehensive, and that responsible government in such matters would be sufficient.

authorities in the colony. The bill was also silent as to maintenance of public faith with the pastoral tenants of Crown lands. It interposed no check upon future alterations of the Constitution. Sir W. Denison (1st Nov.) reserved the bill for Her Majesty's pleasure, and in January gave place to his successor, Sir Henry Young. Lord J. Russell transmitted Her Majesty's allowance of the new Constitution (1st May 1855). In July he forwarded the Imperial Statute (18 and 19 Vict. cap. 56) abolishing the previous statutes affecting Crown lands, but maintaining all contracts, promises, or engagements under them. The formal Order-in-Council (21st July 1855), commanding that Van Diemen's Land should thenceforward "be called and known by the name of Tasmania," was soon afterwards transmitted by a new Colonial Secretary, Sir W. Molesworth. The Electoral Bill required to give vitality to the new Constitution was passed in February 1856. All voting was to be by ballot. The colony was divided into twelve electoral districts for the purpose of returning the fifteen members of the Upper House. Hobart returned three members, Tamar two, each other district one. The Assembly contained thirty members. Hobart Town had five, Launceston three members. Each other district had one member. Machinery was provided for the preparation and revision of electoral rolls, the conduct of elections, the prevention of bribery and corruption, and the trial of controverted elections. The writs for the first elections were ordered to be issued on or before the 1st October 1856. Sir Henry Young gave the Royal Assent to the bill (7th Feb. 1856) and dismissed his Council to seek the suffrages of the new constituencies.

Of Western Australia there is little to be said. In the opinion of most of the settlers the colony had been rescued from utter ruin by the introduction of convicts. In June 1853 Governor Fitzgerald declared that "ninety-nine out of the hundred" of the inhabitants advocated transportation, and clung to the hope that "no colony once made a penal one" would cease to be such until "a majority of the inhabitants" should ask for a change. Few could advocate representative government for such a community. Its numbers rose from less than six thousand in 1850 to more

than nine thousand in 1856 by the addition of criminals and their custodians. In response to the Governor's appeal, the Duke of Newcastle announced that no idea was entertained "of ceasing to send convicts to Western Australia," and by common consent the province remained a Crown colony until the discontinuance of transportation in 1868 prepared the way for other aspirations.

Before discussing the mode in which responsible government was brought into operation in the Australian colonies, it is necessary to explain the manner in which, in Victoria, the spirit of the Constitution was violated, and a pseudo-responsible ministry acquired power before the creation of the most essential ingredient of responsibility—the condition precedent that at least a portion of the ministry should hold seats in the elected Houses. The violence done to the New Zealand Constitution was not lost upon certain functionaries in Victoria, who were exasperated against Sir C. Hotham, because his financial investigations had exposed the extravagance of the past. They conceived a scheme of shaking off the Governor's control, and (by postponement of the meeting of Parliament as long as possible), securing a position in which for a time they would be responsible to no one. But they developed their plan with caution.

Sir C. Hotham invited the opinion of his law officers. The Imperial Act made it necessary to proclaim the Constitution within a month of its receipt. The schedule to it (the amended Colonial Act) said it was to be proclaimed within three months. Each Act declared that it should take effect on the day of proclamation. The law officers expended five paragraphs in proving that proclamation within one month would satisfy the law. The Governor asked when the officers of government, mentioned in the 18th clause of the Constitution Act, of whom "four at least" were to sit in the new Houses, would assume responsibility, and whether they were responsible to the existing Council (in which they were Crown nominees). It did not suit a junto amongst his advisers to disclose their intentions in time to enable the Governor to consult others upon the subject. He was told that

"the words 'responsible officers' occur not in the text, but merely in the marginal notes to the bill, and that the word 'responsible,' applied to such

officers, has no definite legal meaning. To a certain extent the functionaries named in the (18th) clause (the Colonial Secretary, Attorney-General, Colonial Treasurer, Commissioner of Public Works, Collector of Customs, Surveyor-General, Solicitor-General) have always been responsible to the existing Council; nor indeed, with the exception of the necessity of a certain number being elected, do the new Acts make any legal change in their responsibility, though practically they may henceforth be more liable to be removed and called to account according to the feelings of the Legislative bodies than heretofore. Their responsibility to the existing Council legally remains unaltered."[43]

The Governor saw no solution of the difficulty in such an answer, and foresaw not how contradictory a statement would be presented to him after a few days. He was ever scrupulous to conform to advice upon all points of law, and it was correctly deemed that if the chief law adviser should assert that the law required the Governor to follow a given course he would follow it, howsoever discordant with his own judgment. It has been seen that Mr. Foster, the discarded Colonial Secretary, admitted[44] that on law points Sir C. Hotham always asked the advice of the Attorney-General. If, therefore, the Governor could be induced to receive a legal opinion as to his duty, it was confidently assumed that the project in hand could be completed. But its contrivers would willingly have evaded a declaration that it was required by the law. Lord J. Russell's despatch (July 1855), transmitting the Constitution, was received in October. The Act was formally proclaimed on the 23rd November, on which day the Legislative Council was convened. Before it was proclaimed pressure was brought to bear upon the Governor. The Executive Councillors were summoned to consider the estimates on the 6th November. They determined to apprise the Governor that their responsibility would commence on the 23rd, and that they had not considered "whether any estimates whatever should be laid before the Legislature," or "in what manner they should be dealt with." They were "not informed whether they are

[43] Professor Jenks says:—"It may well be questioned whether these opinions are sound. The confusion is between moral and legal responsibility." (Government of Victoria, p. 209.) Moreover, "constitutional responsibility" only came into being after the first elections under the new Constitution.

[44] Victoria Legislative Assembly Papers. 1867. D. No. 18, Question 8. *Vide* p. 604*n*., vol. ii.

requested to consider these estimates as responsible officers under the Constitutional Act, or as officers responsible to his Excellency for carrying out the policy which he may indicate." He was verbally informed that their responsibility would accrue on the 23rd November. Sir C. Hotham thought that the asserted responsibility to the people, of men who proposed to use it in a House of which one-third of the members were nominated by the Crown, was a contradiction in terms and in substance, but his habit of deferring to the Attorney-General, in all questions declared by that officer to be legal, prevailed against his own judgment.

It is fair to let the last despatch[45] which he wrote (from a sick-bed) explain his conduct.

"A singular, and, I apprehend, an unexpected state of things ensued. Conformably to the proclaimed Act, a responsible government came into force under a form of Constitution for which it was not intended; the ministers hold their seats as nominee members by commission from me; and they address a Legislative Council elected under a different franchise, and which does not represent the constituencies contemplated in the Constitutional Act. It required no great degree of discernment to discover that such an anomalous state of things would, sooner or later, produce difficulties, but the interpretation of an Act of Parliament surely belonged peculiarly to the province of the law officers; and although I entertained and expressed an adverse opinion, I did not consider myself justified in acting upon it, more especially as the matter is one in which the colonists were alone interested. It proved, however, that the opinions of by far the greater portion of the representative side of the Legislative Council accorded with my own. A motion was made directly impugning the conduct of the government; a warm debate ensued, and the ministers were only saved from defeat by an insignificant majority.

As to the estimates, the Governor informed his executive officers that if they chose to present his estimates as those for which he was responsible, or to postpone the framing of estimates until they might become so, he was willing to acquiesce in either case.

The contrivers of the scheme for evading responsibility to the Governor or to the constituencies concealed their intentions so long that at the last moment they were compelled to execute them hastily. The Legislative Council was to meet on Friday, 23rd November. The Governor on that day handed to Mr. Haines a minute

[45] Parliamentary Papers, vol. xliii., p. 35. 1856. Sir Charles Hotham did not live to sign the despatch, but Major-General Edward Macarthur, who administered the Government, transmitted the unsigned document.

as to the conduct of business under the new system which was about to transfer so much responsibility to others. He would strictly be guided by the law in all cases, but took occasion to remark that as the Constitution required all appointments to be made by the Governor-in-Council he would insist that all appointments should be so made, and that the advocacy of certain political principles should not be the sole recommendation for offices in which fitness should be the first consideration. Neither Mr. Haines nor his friends objected to the terms of the minute.

Before the Governor opened the House with a speech prepared by himself, Mr. Haines, the Colonial Secretary, in a stammering manner, suggested difficulties and embarrassments which he seemed incapable of explaining. Some act on the Governor's part was required to give vitality to the scheme of Mr. Haines and his coadjutors, but, whether from inability or compunction, Mr. Haines could not describe what the act ought to be. The Governor, failing to discover what was required, requested (24th Nov.) the hesitating Haines to inform the ministers that he felt bound in future to maintain a neutral position, and "in his official dealings to treat with the officer, and totally disregard and lose sight of the man"—a proposition which the ministry did not understand, or of which they did not see the fitness. Mr. Haines, being unable to explain at a second interview (on the 24th) what was required, resorted to the Attorney-General. From him he might draw inspiration. It was then arranged that Mr. Stawell should declare in writing that new commissions were necessary for the responsible officers, so that they might be held to be appointed under the new Constitution, because "politically irresponsible under the old Act, they continue to hold offices, the occupants of which are responsible not merely legally but politically, and thus their position is most anomalous. They may be removed by the Governor . . . but it is more than questionable how far they are politically responsible to anybody." By the issue of new commissions their position would be "determined and their responsibility unquestionable" (24th Nov.) There was a much greater anomaly with which Mr. Stawell did not deal. By the new Constitution it was demanded that responsible officers

should not be nominees, but should sit in Houses both of which were to be elected by the country. Neither was there any attempt to reconcile the opinion given about responsible officers in October with the new doctrines of November. In the October opinion the Acting-Solicitor-General had concurred. The November opinion was not seen by him. On Sunday, the 25th, Mr. Haines forwarded the letter to the Governor, hoped it would be satisfactory, and added, "I regret very much that I did not succeed in placing the state of the case before you as plainly as I ought to have done." Another interview took place, and it appeared that there was still something to be revealed, which Mr. Haines wanted resolution to communicate.

The Constitution Act provided that pensions should be secured (not at the proclamation, but) "at the time of the coming into operation of the Act" for certain officers "who, on political grounds, may retire or be released" from office. If the Governor could be induced to use a pleasing force the pensions might at once accrue. The junto who were to benefit by the release were Mr. Haines, Mr. Stawell, Mr. Childers, and Captain Clarke. Captain Lonsdale, the absent Treasurer, and Mr. Croke, the absent Solicitor-General, were, however, to be included in the scheme, and released without being consulted. Mr. Sladen, the Acting-Treasurer, Mr. Molesworth, the Acting-Solicitor-General, and Captain Pasley, the Colonial Engineer (whose office was not designated in the Constitution Act), had no interest in these proceedings. As Mr. Haines could not explain the money question satisfactorily, but averred that the Attorney-General thought that the Governor ought to protect the released officers, Mr. Stawell was sent for. The Governor resided at Toorak, four miles from Melbourne. He was wasted by severe labours, but it was not apprehended that death was at hand. His manner was firm. The remains of his bodily frame he still bore erectly. Mr. Stawell waited on him (26th Nov.), and was asked what the mystery was which Mr. Haines could not unravel. Mr. Stawell explained that, as the Queen's representative, the Governor was called upon by the Constitution Act to exert the authority necessary to expel certain functionaries from office. The Governor looked fixedly at his adviser. "Do

you, as Her Majesty's Attorney-General in this colony, declare to me that I am called upon by the law to take this step?" Answered affirmatively, he said: "Then write the letter, and I will sign it." The play was played out accordingly. In words written by the Attorney-General at the Governor's table the junto were informed by the Governor that the proclamation of the new Constitution having made it "necessary" to form a ministry, it was the Governor's "duty to inform" them that they were to consider themselves "released on political grounds."

Mr. Haines was called upon to submit a list of persons to form a ministry. He submitted to his Excellency's pleasure in releasing him, and asked the Governor to "authorize the payments" (as pension) sanctioned "by the Constitution." Mr. Stawell, Mr. Childers, and Captain Clarke followed his example. Silence was observed as to the Governor's former minute upon the manner in which his duties under the new Constitution would be performed.

When the Legislative Council assembled on the 27th, the Colonial Engineer, announcing the resignation of office by Messrs. Haines, Stawell, Childers, and Clarke, moved the adjournment of the astonished House. On Mr. Fawkner's motion the members declined to adjourn until they had carried an address asking "the fullest information with regard to the dismissal or resignations of certain members of the Executive Government as stated to this House." Two objects—the achievement of pensions, and of irresponsible power—might be in jeopardy if the information supplied should show that the release of the officers, instead of being a high-handed act of the Governor, was insisted on by themselves. On the morning of the 28th the Attorney-General had commissions ready, and the retiring pensioners were all reappointed to their old offices with little variation of style. The post of Treasurer was assumed by Mr. Sladen in room of Lonsdale released. Mr. Robert Molesworth similarly filled the place of the released Solicitor-General. The Colonial Engineer, Captain Pasley, R.E., accepted a new post as Commissioner of Public Works, and claimed, under the 18th clause of the Constitution Act, the responsible position which Mr. Stawell had assured the Governor in October had "no definite legal

meaning." Captain Pasley was at all times recognized as ready to serve the Queen with equal zeal in any part of her dominions at a moment's notice. It was admitted in the House that Mr. Molesworth was not even informed as to some of the steps taken until after their completion,

It remained to be seen in what way the Legislative Council would act. The officers thrust upon it by the Governor's prompted act as reputedly responsible, had an official phalanx of great strength. One-third of the House was nominated by the Crown, and the nomination had been exercised mainly in appointing friends of the pseudo-ministers, who themselves were equivalent in proportion to more than seventy members on a division in the House of Commons. The Electoral Bill which had been sent to England (to ensure an enlargement of the House, and to entitle holders of miners' rights to vote, whatever might befall the Constitution Bill) had been assented to, and elections had taken place under it. The restlessness of portions of the community was shown by the choice of the new constituencies. Lalor the rioter, Humffray the Ballarat agitator, were among the new members. Mr. Grant, the solicitor who had denounced military coercion in Melbourne, had become member for Sandhurst. The Governor furnished the Council on the 28th with the documents they had asked for on the 27th. They were read by the Clerk amidst symptoms of astonishment at the acceptance of office under the conditions imposed, and at the precise claims put forward for pensions.

On the 4th December, Dr. Greeves, one of the city members, moved resolutions condemning the arrangements made

"at the instance of persons directly interested, whereby his Excellency has been induced to release from office on alleged political grounds certain high officers of government under the supposition that the mere proclamation of the new Constitution Act brought into operation the powers which can only be exercised after the return of the writs for the first election, or, at farthest, of the meeting of the Council and Assembly."

He traversed the course taken in appointing nominees to hold offices tenable only by representative members; and condemned as humiliating the terms of the Governor's minute (23rd Nov.) under which the officers had consented to serve.

There was vehement speaking, and the debate was adjourned. On the 5th it had been resolved to make the Governor a scapegoat. An official, who was a representative member, moved an amendment striking out all condemnation of the ministers except such as was implied in a regret that they had accepted office under the Governor's "unconstitutional" minute of the 23rd, against which the Council was asked to protest as "hostile to the liberties of the people." Some who did not approve what had been done shrank from a decision which might place Dr. Greeves at the head of affairs. Throughout the debate the Governor's imperiousness, in the obnoxious minute and in the curt release of the officers, was frequently upbraided. No man on the ministerial bench stated that the letter was not the Governor's handiwork. On the contrary, though the Attorney-General spoke for an hour, he left undisturbed the belief, though he never alleged, that the letter emanated from Sir C. Hotham. As far as the ministers were concerned they had acted solely for the good of the country. As to the obnoxious minute, he pleaded that it had been ignored, and that the Governor had recalled it. It is impossible to decide whether, if it had been known that the letter releasing the officers was forced upon the Governor as a legal necessity, the division which followed would have been of a different kind. It may be thought that concealment of the truth betokened fear lest a knowledge of it should injure the position of the released officers. That position seemed more secure in proportion to the amount of obloquy which could be fastened upon the Governor.[46] But it was not by

[46] The author must in this instance depart from his usual practice of not putting forward as historical truth an assertion dependent on personal knowledge. Shortly after the debate he saw Sir C. Hotham, then very ill, at his house. He had heard of the bitter remarks (many of them unreported in the press) denouncing him for releasing arbitrarily the officers. He asked if the author had heard the debate, and was told that his minute and his letter were alluded to as arbitrary. He narrated the manner in which the letter was obtained from him, and it was suggested to him that he might record the facts either in a despatch or in other manner. He shook his head. "No; the officers have their own difficulties before them. It is not for me to make them worse. However, I must bear with this as I must bear with many other untruths; but when I am gone you are perfectly at liberty to tell the truth, about me and my acts, in this respect as well as in others." It seems proper to record here the authority thus given.

argument that their position could be maintained. Neither Mr. Haines nor Stawell could ply the secret arts necessary to secure votes, but others were born to the manner of them. The chance was desperate. If the resolutions should be carried offers made might perish in the promise, and proposed recipients might lose character and prospect. An elected member, perhaps patriotically inclined, signified to Captain Clarke that he could support the government if a certain appointment (not under Clarke's control) could be his. Others conversed with Mr. Childers. On a division (5th Dec.) (as to the retention of Mr. Greeves' words as part of the question) the numbers were equal. But the 28 in favour of Greeves were all elected. Eight official nominees, seven unofficial, four officials who had been elected, and nine other elected members, opposed Dr. Greeves. Amongst them the object of Captain Clarke's solicitude was found, and was denounced as a traitor. The Speaker gave his voice with the elected 28. Further solicitations were applied. Members were entreated to reflect on the disasters they might cause, and on a final division 29 votes against 28 rejected Mr. Greeves' proposition.[47] Papers were then laid upon the table showing that (after the terms of the Governor's minute had been publicly criticized) the ministers had protested against it, urging that it had not, when they accepted it, received the consideration to which it was entitled, because they had been "anxious not to allow the country to be without a government one moment longer than was absolutely necessary." There may have been some who speculated with

[47] Professor Jenks anatomizes these proceedings. As to responsibility, he says, "It was impossible that this test should be applied till the new Parliament met, and when the officials were reappointed, they took nominee and not elective seats," . . . the new system could not possibly operate until a Parliament in the new form was summoned, for no expressions of opinion by the existing Legislative Council could affect the holders of non-elective seats. It seems, therefore, abundantly clear that the officials should have stood by their existing appointments till the meeting of Parliament. By the course they took they laid themselves open to grave suspicion of personal motives, and only avoided the disgrace of a condemnatory resolution by the doubtful expedient of voting for themselves." ("Government of Victoria," p. 216). From a parchment point of view it seems that a scholar must condemn the imposture of 1855 in almost the same terms as must be used by the historian whose function calls upon him to "look through the deeds of men."

peculiar pleasure on reversing wholesome changes which, by toiling night and day, the overworked Governor had made. He, on the contrary, speculated upon no future in the colony. He had written (23rd Nov.) to solicit release from office. He summed up his labours in the restoration of order at the goldfields; the abolition of the imprest system; the recuperation of the revenue; the fact that, in all departments, economy had been successfully practised; that the police estimate for 1855 (framed before his arrival at £900,000, and cut down by a vote of the Legislature to £416,000) had been respected in its diminished proportions, while for 1856 he had been able to reduce the estimate to £312,000.[48] Whereas in 1854 he had found a revenue deficient nearly two millions sterling; in 1855 he had so filed down the expenditure that the supplementary estimate was only £9800. Regulations had been framed for the control and disbursement of the public funds. He added—

"I hope, Sir, you will consider this statement satisfactory. I have used every power which the Almighty has given me to advance and promote the interests and welfare of the inhabitants of this noble colony, but in so doing I have tasked my energies beyond their natural limit. My health has materially suffered, and the time has arrived when I must request you to lay my resignation at the feet of the Queen, and pray Her Most Gracious Majesty to appoint my successor."

He had been led by the first Lord of the Admiralty to hope that if he would become Governor of Victoria in 1854 he might return to the navy in a higher command,[49] though he was not permitted at once to relinquish the Governorship and serve in the war against Russia. He had never been a candidate for the position of Governor, and the Prime Minister had joined in pressing him to serve in Victoria. Sir James Graham had urged that the Government was "most desirous" that he should proceed to Victoria where his place could "not be supplied," and he had submitted. But the work he had undertaken was done. He longed for release. The thoughts of such a man were far from those in which his detractors indulged, and it was not fated that he should suffer indignities at their hands.

[48] The substitution of an export duty as a means of levying royalty instead of the expensive license fee personally collected, had largely diminished the staff required at the goldfields.

[49] He transmitted a copy of Sir J. Graham's letter.

But he and they were to see, in the brief remainder of his life, distinct proof of the unconstitutional nature of the advice forced upon him in the name of law. An Electoral Bill was set down for its second reading. Mr. William Nicholson gave notice of a motion, "That in the opinion of this House any new Electoral Act should provide for electors recording their votes by secret ballot." Mr. Nicholson had won esteem as a townsman; had been Mayor of Melbourne; and had distinguished himself in legislating against the landing of "expiree convicts" in Victoria. He was patriotic, but not ambitious. His frame was burly, but his mental constitution sensitive. He could speak cogently, but was nervously disinclined to address an audience.

On the 19th December his resolution was carried by 33 votes against 25—Mr. Childers and his official friends finding themselves in the minority with Mr. O'Shanassy, Mr. Fawkner, and Dr. Greeves. On the 20th Mr. Haines announced that the Ministry had tendered their resignations. They calculated that retention of their nominated seats would enable them to defeat any organization dependent solely on the votes of the elected members. Nicholson, though highly esteemed, had no departmental experience, and had no selfish purpose in view when he moved his resolution. He had made arrangements at the time for visiting England. It was a part of the scheme of the junto to throw upon the House a responsibility which (in default of a control over the nominated seats) it could not exercise, and then (on the failure of the representatives) to return to office stronger than before, by reason of having shaken off the constitutional authority of the Governor under the old system, and having with votes of nominees overborne the representatives of the people.

The Council adjourned (21st Dec.) until the 8th January. Mr. Nicholson was sent for by the Governor on the 21st, and might, perhaps *in limine*, have protested that responsibility could not accrue until the new Legislature rendered it constitutional. He would have been answered:—"The law officers have affirmed, the Governor has consented, the Legislative Council by a majority of one have resolved that ministerial responsibility exists." He could have replied:—

"In the division in the House the votes of official nominees were recorded. I undertake the trust on the condition that your Excellency will place the nomination of the holders of the official seats at my disposal, subject to your Excellency's approval of the arrangements I may make." If the Governor had agreed, the seven ministerial seats would have been vacated, and the filling of them would have insured an ample majority for Mr. Nicholson, irrespective of other official (non-ministerial) seats, which would also have been at his disposal. The non-official nominees he could well have afforded to leave undisturbed. They had been appointed at various times by the upright Latrobe, and had often indicated independent zeal for the good of the country. If the Governor had not consented to place the official seats at Mr. Nicholson's disposal the character of the scheme which retained them as ingredients in a so-called responsible system would have been manifest. Mr. Nicholson, unprepared for the crisis, did not see the conditions of the problem, and attempted to form a ministry out of his friends in the House.

The icy hand of death was already upon the Governor when Mr. Nicholson saw him. On the 17th December he had been present at a formal opening of the works of the first Gas Company in Melbourne. A storm of wind and rain struck his wasted system, and the effect was never shaken off.

Mr. Nicholson undertook the task of forming a ministry, still adhering to his intention to leave the colony. He found intrigues busy amongst his friends. He was told that he could not make a ministry and depart immediately to England. He waived his private arrangements and consented to become Chief Secretary. He was requested by the Governor to furnish him on the 29th with an answer as to his success, which was then accepted by the public as assured. But on Friday, the 28th, the Governor was dangerously ill. He had not strength to resist the disease which, marking him first on the African shore, claimed him in Australia, emaciated as he was by labours which had been aggravated by some who should have been his loyal supporters. On Saturday he was in worse condition, and Nicholson's negotiations were incomplete. The dying

Governor by message asked Nicholson to see him on Monday, and directed that a letter should be written to Mr. Haines on the subject of framing an administration. Nicholson was informed of the letter to Haines. While giving his latest instructions the Governor manifested no indecision. But on Sunday morning epilepsy closed the struggle. His frame gave way, without allowing consciousness to regain control, and on Monday morning Lady Hotham was a widow.[50]

Major-General Macarthur became administrator of the government, and (1st Jan.) asked Mr. Nicholson if he might consider himself at liberty to send for Mr. Haines. Nicholson left the matter entirely in the Acting-Governor's hands, and Haines was requested to form a government: the issue being known beforehand. Each member of the Haines ministry resumed his place. A public funeral was accorded to the remains of Sir C. Hotham on the 4th January. On the 5th an inspired journal concluded its treatment of the late Governor by an article which admitted that his desire had ever been for "the public welfare"—

". . . but while we agree that he was hurried prematurely to the grave by undue strain upon his faculties, by the unfavourable expression of public opinion, by misunderstandings with his advisers, and by the incessant attacks made upon him, we are not inclined to agree that his death is a cruel and useless sacrifice, and that those principally responsible for it, so far as their course has been a conscientious one, have a deep sin to answer. On the contrary, we look upon such an idea as erroneous."

A stranger to the truth might have supposed that attacks upon the Governor hastened his death. One who knew the facts could only have written the foregoing triumphant criticism if he had been a conspirator by whose aid the labours of the Governor had been increased. The public feeling was nobler than that of the critic. In the vast con-

[50] Thus she wrote on the 15th January: "That he was indeed most sorely tried in the faithful discharge of his duties you in your official position must have often witnessed, and I have had the pain of seeing him return from the Government offices worn and weary; but he would never allow himself to rest until the work of the day was done, however tired he might be. It is most true that he knew his labours were wearing away his health; but were the struggle to come over again he would do the same, for duty with him was stronger than the love of life, and many times I have heard him say. 'I stand with my back to the wall and fight single-handed. I may fall, but if I go down it shall be with my colours flying.'"

course which attended the funeral there was visible a solemn conviction that an honourable man had passed away, and genuine sympathy was shown. It was felt that he had succeeded to a difficult task, that he had in eighteen months restored the supremacy of law, redeemed the public credit, and had died at his post.

After the House reassembled, Mr. Fawkner moved that Major-General Macarthur be requested to cause £1500 to be devoted to defray the expenses of the funeral of the late Governor, and to erect a monument to his memory. Mr. Grant, Mr. Humffray, and Dr. Owens vainly opposed the motion.

In narrating his failure to form a ministry, Nicholson (8th Jan.) bluntly said that if the new Constitution had been in operation he would have succeeded, but he did not like to go outside of the House. He asked Mr. Haines to leave the ballot an open question. He had prepared the clauses required to carry out the recorded decision of the House.

After some delay Mr. Haines announced that in future the ballot should be considered a non-ministerial question.

The House, though it could not make Crown nominees responsible in a parliamentary sense, could insist by majorities as to the making of laws, and Nicholson carried all his clauses in committee. A wholesome check upon tampering with voting papers or with the ballot-box was inserted, contrary to Mr. Nicholson's wish, though he lived to approve of the principle. By marking the elector's number on handing him his voting paper, and guarding (by presence of scrutineers, &c.) against any possibility of the numbers being looked at on counting the votes, and by having them sealed up until required (within a specified time) before any tribunal, frauds which had occurred elsewhere were rendered impossible : inasmuch as on petition the whole number of recorded votes could be duly ascertained, and any elector desirous to know whether his vote was applied according to his intention could discover the truth before the committee.

Mr. Childers could not reconcile himself to the ballot as even practicable. He assured the House (23rd Jan.), with a formality which did not convince it, that he had satisfac-

torily established the proposition, that under the ballot a separate "polling-place would be required for every 120 or 160 voters."

Abnormal proceedings in the House excited demands for new things out of doors. Messrs. Grant, Humffray, Owens, and others sought a popular verdict in favour of local election of a Governor. On a requisition, which included Mr. Westgarth's name, the Mayor convened a meeting, but declared to those who assembled that, as he would not link himself with disloyalty, he would not preside. Mr. Westgarth took the chair, and the meeting ended in confusion.

The contrivers of pseudo-responsible government in Victoria well knew its inherent vices, and thought it desirable that another Governor should sanction similar proceedings. An adverse judgment might be given by the Secretary of State upon an isolated case, which he might modify if several colonies should furnish instances of like nature.[51] There was one Governor whom Captain Clarke might hope to influence. If the Governor-General could be induced to follow the example in Victoria no special censure would attach to it. But Sir W. Denison was warier than Sir C. Hotham as to political recommendations from law advisers, and the public esteem in which Deas Thomson was held made it necessary to consult him.

When Deas Thomson went to England in 1854, his admirers had subscribed for a testimonial to him, and after selecting a piece of plate, he had devoted £1000 from the contributions to the establishment of a scholarship in the Sydney University. Except amongst the followers of Lang, Deas Thomson was regarded with affectionate respect. He returned to Sydney in January 1855, the Governor having been sworn in under his new commission (under the new Constitution) in December.

Captain Clarke had already written to describe what he called the "ministerial crisis" in which he and his col-

[51] In effect the Colonial Office (so far as is shown by papers laid before Parliament), evaded the question. Mr. Labouchere, in acknowledging the despatches about it, merely wrote: "It is only necessary for me to remark that the points to which it relates will probably long have ceased to possess any practical importance." Parliamentary Papers, vol. xliii. 1856. (2135.) By such loose reasoning it might be urged that when a wrong has been done it is needless to say anything about it.

leagues were "released on political grounds," and reappointed; but Sir W. Denison "decided to await the arrival of Mr. Deas Thomson before (he) made any attempt to modify the existing form of government." [51] The Victorian junto began to fear that their plot would fail. If Deas Thomson could, like Captain Lonsdale, have been released in his absence all might have been well. His presence on the scene might mar their designs. The Governor complied in some degree with their wishes. He verbally pressed upon Deas Thomson the importance attached to his acceptance of office, "were it merely for the purpose of affording the assistance . . . which his thorough acquaintance with . . . the colony and the details of administration so fully qualified him to give." He urged him by private letters and by despatches. He had not nominated any Executive Councillors after he was sworn in, because he had hoped to induce Deas Thomson to gratify the universal desire that Thomson should form the first government; but difficulties would soon arise from the want of an Executive Council. Deas Thomson relieved the Governor as to those difficulties by pointing out that persons unconnected with party politics might become members of the Executive Council, and Colonel Blomfield (the officer in command of the troops, and a member of the defunct Executive Council); Sir Charles Nicholson, the Speaker; with Messrs. W. S. Macleay, and James Macarthur, of Camden, were appointed. They were not men who would lend themselves to any fraud upon the Constitution. When the question of pensions for the retiring officers was mooted, Deas Thomson and others represented that no such voluntary act as was asked at the hands of the officers would entitle them to be considered as retiring, or being released, in the terms of the Constitution Act. Though the fact that Sir C. Hotham's letter (of release) was imposed upon him was unknown, it was held, nevertheless, that the proposed retirement would be irregular.

Sir W. Denison himself thought that no political grounds could "be said to exist at present," and that therefore "no

[51] Despatches to Secretary of State, 21st December 1855 and 19th February 1856. Parliamentary Papers, vol. xliii., 1856 (and Denison's "Varieties of Vice-regal Life").

application to retire could be entertained."[52] Yet, when Deas Thomson formally declined to undertake the task (24th Jan.), Sir W. Denison applied to Mr. Donaldson to form a ministry; and, but for a legal difficulty, he might have persevered. The Governor was requested by his Councillors to ask the Judges of the land whether the proposed voluntary release of the officers would satisfy the spirit or terms of those words in the Constitution Act which Wentworth had originated, and which had been imitated in the Victorian Act. He consented to do so. The Judges (8th Feb.) furnished an elaborate and unanimous opinion that the changes made in the Governor's Commission did "not constitute valid political grounds within the meaning of the enactment for the retirement of any of (the) officers" named. The Chief Justice, Justices Therry, Milford, and Dickinson were all of one mind on that point. The last-named declared that none of the officers could by resignation claim the pensions so long as they were allowed to retain office, whether they might or not be permitted to be members of the Executive Council. On one point the Judges explained their own position. They desired to avoid the imputation of prejudging a question which by possibility might be tried afterwards in the Supreme Court upon argument. For any arguments they were bound to "keep their minds open." But in deference to the Governor's position, and consideration of the public interests, they felt that the case was one of the rare order in which the Judges of the land could "with propriety assist Her Majesty's representative in the construction of an Act of the Legislature." Examining the question legally, and not excluding political considerations, they proved that "the right to the pension will not arise unless the retirement be in fact and *bonâ fide* on political grounds a matter of moral pressure or compulsion."

Their opinion implied that law coincided with common sense. The resignation of a ministry in the mother country

[52] Despatch, 19th February 1856. His opinion would therefore have been averse to the procedure in Victoria. But as it was not publicly known that Sir C. Hotham's letter was extorted from him, the real case of Victoria was unknown in Sydney. It might well have been supposed there that so important an element would have been stated in writing or mentioned in debate.

was, they said, caused by "a moral necessity, a result forced on its members in some way or other by political circumstances." In any event the ministry (if such the officers were to be considered) "would be compellable to continue in office for a time. In Great Britain ministers never, in fact, throw up their offices or refuse to do acts devolving upon them as ministers; they continue invariably to hold office until successors are found to them." The Judges' opinions were so clear that the Governor entertained no doubt as to his duty. He was not prepared to take the initiative before the elections to the new Assembly should furnish the authority through which, with the Upper House, ministries were to become responsible to the Legislature. He withdrew his application to Mr. Donaldson, and appointed Deas Thomson and the Colonial Treasurer as members of the Executive Council. The government was to be carried on, as the law required, under the responsibility of the Governor until the birth of legitimate responsibility through the bicameral Parliament. It was perhaps through consideration of the difficulties which might be created in Victoria by the publication of a judicial condemnation of the proceedings of Mr. Haines and his colleagues, that some secrecy was preserved in New South Wales as to Sir W. Denison's appeal to the Judges. But the general facts became known, and after a time the opinion of the Judges was included amongst papers laid before the House of Commons.

The government in New South Wales was carried on with an impartial hand by the Governor and his Executive Council, until the elections of 1856 furnished the means of forming an administration. Mr. Deas Thomson, though invited to stand for Sydney, declined to do so. The "moral compulsion" spoken of by the Judges occurred, and the retiring officers received their pensions according to law. The singular manner in which Mr. Childers by voluntary retirement in 1857 acquired no claim to a pension, but was by the liberality of the Victorian public allowed to receive one, was explained in the First, but need not be repeated in the Second edition of this work.

It is necessary to describe briefly the use which the spurious ministry in Victoria made of their position. An amusing

contrast between two of them was shown with regard to the vote which blandishments secured when Dr. Greeves assaulted the "political release." The office expected by the voter was under the Department of Captain Pasley, the Commissioner of Public Works. No man would have dared to propose that Captain Pasley should take part in a corrupt transaction. His colleague essayed to sap the fortress which he could not openly approach. He suggested that the applicant was a fit person. Captain Pasley doubted it, but was determined to get the best man available, after due inquiry. It was insinuated that the office had been "as good as promised." "Impossible (quoth Pasley); it is in my Department, and I have not decided upon the matter in any way." To expound the occasion of the quasi-promise would have been vain. Pasley did not bestow the coveted office upon any member of Parliament, but sought for a more competent, if less convenient man.[53] No difficulty was apprehended as to securing the assent of the Acting-Governor, unless in plain terms it had necessitated disloyalty on his part to the Queen. He drew no distinction between his position and that which would be the position of a Governor after the elections under the new Constitution. He assumed that his advisers would always mean well, and signed everything put before him without remark, and often without taking the trouble to understand. This he did without consciousness that his position prior to the elections demanded discriminating impartiality, and without the fault of indolence in endeavouring to equip himself for his functions.[54] Though the Major-General had at Ballarat been the means of enabling Sir Robert Nickle to offer rewards for rebels, Captain Clarke saw no impropriety in obtaining Macarthur's sanction to the appointment of the rioter Lalor as Inspector of Railways. Subsequently[55] a law was passed

[53] In amusing contrast with the facts, an inspired newspaper said (22nd July 1856) that when the negotiated "traitorous vote" was given it was "known both to the voter and to the government at the time he gave it that it was necessarily fatal to his claims."

[54] He had had a singular experience in his youth. In 1808 he saw the life of his father, John Macarthur, in jeopardy under the tyranny of Bligh. He saw Bligh's forcible deposition and imprisonment.

[55] In 1858 an Officials in Parliament Bill was introduced in the Assembly to limit the number of placemen to certain ministerial persons. The Council inserted an amendment to prevent any member of Parliament from

to put a stop to the unlimited creation of placemen which a failure to copy Wentworth's Bill had rendered possible in Victoria.

It was natural that the pseudo-ministry should strive, by securing elective seats, to maintain their position before the Parliament when the new Constitution lawfully came into operation. Some amusement was created when Mr. Childers, who wooed the electors of Portland, stated that "the cash was on the way" for a local work, and when Captain Clarke, to propitiate electors at Emerald Hill, promised them a cemetery. But all the ministers secured their seats. The upright Molesworth had become a Judge, and Mr. T. H. Fellows, enjoying a reputation at common law second to none in the Southern Hemisphere, had become Solicitor-General. But the ministry wanted confidence in itself. It feared to adhere to the Constitution which it had assisted to frame in 1854. The reduction from £10 annual value of freehold to £5, and the maintenance of leasehold qualification at £10, had been deemed sufficient in 1854; but in 1856 the ministers became apprehensive as to their positions. There was probably no society in the world which could less afford to undergo rapid degradation of the franchise. There was, probably, no society in which the rulers were so ready to adopt or to suggest rash experiments. It may well be doubted whether, taken man for man, there was any community possessed of more intelligence than that of Victoria. But there was a lack of combination of the general intelligence for the general good. The restlessness of gold-seekers; the lawlessness of thousands who had formally expiated crime by imprisonment, but were not purged of it in their hearts; the evils which had culminated in the insurrection, which it had been found necessary to put down by arms; the election of former agitators by the goldfields constituencies—all of these were clouds of danger, which should have led not only the government, but all candidates to weigh their words scrupulously when the choice of members for both Houses devolved upon the people. To lead men's minds to sober thoughts at such a time was a duty of which the addresses of candidates

accepting office within six months of tenure of his seat. After some demur the Assembly accepted the amendment.

showed no recognition. The wisdom which was lacking amongst them could hardly be looked for amongst those whose votes they sought. Poured so suddenly into the land, prompted by eager ideas, drawn originally from restless classes, it was natural that the population of Victoria (converted from 76,000 in 1850 to 397,000 in 1856) should embrace crude notions. Some boasted that they would show an example to the world; and they succeeded, though not in the sense intended. The world itself is caught betimes by delusions. The assassins of the French Revolution mouthed the maxims of ancient heroes, amidst the applause of dupes, who lent themselves to tyranny and murder under the names of equality and fraternity. When the atmosphere is murky the levin flash may dart from clouds which seem not to portend danger. When men's minds are disturbed they are kindled to enthusiasm, which will wreak in the name of virtue acts which sober sense would call crimes. Thus the cry of Reform was in England associated with wholesale lowering of the franchise. In populous Birmingham, Chartist agitators were elected at the first municipal elections held under the new charter of incorporation in 1859. From Birmingham, through the crucible of transportation and the fury of gold-seeking, thousands of reformers had congregated in Victoria. Glasgow, rapidly assuming the importance of numbers, had her Chartist Convention in the same year (1842) in which the London Chartists endeavoured to overawe the House of Commons. Scotland (ever democratic in her political proclivities, perhaps in consequence partly of the bent of mind due to her ecclesiastical organism) furnished her full quota of the colonists who flocked to Port Phillip. Ireland had sent her thousands, and in 1856 they poured treasure into the pocket of Duffy, who boasted that as regarded Ireland he was rebel to the core. John Mitchell, who had denounced Duffy, had friends in Victoria, and had, while Duffy's friend, in set terms declared his mission to be "to bear a hand in the final destruction of the bloody old British Empire."[56] Many of the foiled Chartists of the 10th April 1848 transferred their energies from Kennington to Ballarat, Sandhurst, and Melbourne.

[56] Letter to the Lord Lieutenant of Ireland; April 1848.

Reasonable demands for extension of the suffrage in England were never based on the wild claims which Pitt demolished in the House of Commons in 1793. The corner-stone of the power of that House was its ability to check waste or misrule, because, without the voice of the representatives, no tax could be imposed, no army maintained. But the life of the principle thus embodied in the Constitution was poisoned when it was contended that the suffrage should be so lowered that the imposition of taxes should be controlled, not by those who paid them, but by the majority of those who did not. Common sense required that at least the centre of power should reside in those who were to pay. The grander principles that every Englishman was entitled to justice and trial by his peers had been fixed in the Great Charter and secured in succeeding generations. Safeguards for the liberty of the subject being writ large in the Constitution of England, and constituting its very life, have, in the mother country, in the United States, and in other colonies sprung up from her, endowed her children with a prouder boast than the Roman *Civis Romanus sum*. But it is the height of unreason to argue that the birthright of freedom involves a right for him who pays no taxes to order the manner in which the taxes paid by the industrious shall be raised and spent. The central power was for some time in England unduly placed, and it was in harmony with the Constitution to shift the balance so as to adjust the machine of taxation. Such an operation required nice and judicial care, and was perhaps in danger of abuse in the hands of the empirical Lord J. Russell and his tutor, Lord Durham, in 1832. Nevertheless, in those days the theory of taxation was respected. It was not contended that all "flesh and blood," however idle, had a right to impose taxation upon the property of a neighbour, however industrious. Such a contention, if urged too boldly, might have bred suspicion that the claimed right of taxation was but a covert claim to rob. No more eager reformer than Macaulay supported the bill of 1832; no man more cogently than he foretold the evil results of universal suffrage. Again, reformers in England who urged the claims of educated persons who lacked a property qualification, had, in theory, a justification by no means dependent on the "flesh-and-blood"

claim afterwards put forward by Mr. Gladstone. They sought the suffrage for the intelligence of the community, and urged that possession of property was too rough a test of intelligence to be relied upon. In this claim also there was reason, though it was matter for argument whether the probable good surpassed the probable evils arising from a departure from the principles on which Edward I. established the House of Commons in the 13th century.

Such being the conditions of the problem, it might at least have been hoped that the men who had taken a part in framing the new Constitution, whether in the colony or in England, would give it a fair trial. Such hopes were doomed to disappointment. Prominent amongst the local politicians was Mr. O'Shanassy. Capable in debate, and as an administrator, he had taken, and was expected to take, a foremost position in public affairs. Having been a member of the Committee which drafted, and of the Council which passed, the Constitution Bill, he could not complain that his voice had not been heard, or his vote had been rejected, in framing the new order of things. Yet he was amongst the first to betray it. Seeking the suffrages of electors in 1856, he advocated the "extension of the suffrage to every man." Mr. Michie and Mr. David Moore, wooing the Melbourne electorate; Mr. H. S. Chapman, Mr. Harker, and Mr. J. D. Wood in courting suburban constituencies, pronounced in favour of "universal suffrage." Mr. Henry Miller, addressing the electors for the Upper House, declared himself "in favour of manhood suffrage for the Legislative Assembly."

It must in justice be said that Captain Pasley pleaded for delay. He would by no means support vital changes. Let the Constitution be tried as it existed by law. His prudence was not imitated by his colleagues, and they made the Acting-Governor, in the first vice-regal speech to the two Houses, ask them to "extend the basis of the suffrage." The recent immigrant, C. G. Duffy, found in Victoria those who welcomed him as a regenerator of society. His chief claim to distinction was having been convicted of sedition with O'Connell and others in 1844, and having been released when, on a writ of error, the House of Lords quashed the conviction on the technical

ground that the Irish Court had improperly confounded bad and good counts.[57] An Irish constituency elected him in 1852, and he took an oath of loyalty to the Queen at the table of the House of Commons. There he was compelled to attend in his place for using language deemed unparliamentary, and to express regret if he had violated any rule of the House. He also aided Lowe in thwarting the provisions which Wentworth's sagacity had inserted in the New South Wales Constitution Bill. But he began to lose ground amongst former comrades. No language could be more bitter than that in which John Mitchell denounced him as a traitor. His quiver being exhausted at home he migrated to Victoria.

A community recently convulsed had acquired new powers,

[57] In 1883 Duffy published a volume justifying the seditious movements of himself and his friends. In 1848 the French revolution had aroused his hopes. "Ireland's opportunity—thank God and France—has come at last." He and others sent a deputation to Paris, but (he sadly recorded in 1883 that) "Lamartine's answer was a great disappointment." Time appears hurtless against sedition in some minds. Some vigorous sentences of Sir Robert Peel (not inserted in a collection of his speeches published in 1853) are to be found in *Hansard*. When Smith O'Brien was arrested there was found in his trunk a letter from C. G. Duffy—containing these words: "There is no half-way house for you. You will be the head of the movement. . . . You have at present Lafayette's place, and I believe have fallen into Lafayette's error, that of not using it to all its extent and in all its resources. I am perfectly well aware that you don't desire to lead or influence others; but I believe with Lamartine that that feeling which is a high personal and civic virtue is a vice in revolutions. . . . If I were Smith O'Brien I would strike out in my own mind, or with such counsel as I valued, a definite course for the revolution, and labour incessantly to develop it in that way. . . . Forgive me for urging this so anxiously upon you, but I verily believe that the hopes of the country depend upon the manner in which the next two months . . . it is only by applying all our force to it that we will succeed." With prescient sagacity Sir R. Peel had previously (18th April), when the Crown and Government Security Bill was before the House of Commons, pourtrayed thus the character of the tempter to sedition. He mentioned no names. The picture needed no label. "I cannot conceive a more detestable character than that of him who, for the purpose of gratifying his personal vanity, or in the hope of having his name combined with splendid names that are included in the category of traitors, urges on his miserable and degraded followers by his speeches or writings, but is not willing to share with them a common fate. I shall rejoice to see such men reduced, as they ought to be, to the condition of felons. Let those frogs which are croaking sedition remain in their marsh, and let them not puff themselves into the dignity of those nobler animals which bellow treason."

and might afford scope for his talents.[58] He landed in January 1856, and received from Mr. O'Shanassy and others complimentary addresses. Mr. Henry Parkes and others forwarded an address from Sydney. Duffy recognized the probable usefulness of O'Shanassy's reputation, and rejoiced "to stand face to face with the best and most gifted Irishman in the new world—John O'Shanassy." He was entertained at a banquet, and disclaimed ambitious views. Those who dreaded him might allay their fears. "The most destructive weapon he carried was 'Chitty's Practice of the Law.'"[59] He desired to live at peace. "But let him not be misunderstood: he was not there to repudiate or apologize for any part of his past life. He was an Irish rebel to the backbone and spinal marrow." This declaration, maugre his oath in the House of Commons, grated upon the ears of a portion of the company. It could not be ascribed to unpremeditated warmth, inasmuch as he was known to concoct speeches with care, and hand his manuscript to reporters. But enthusiasm is not to be repelled by a blunder. It was determined to present him with the property qualification required by law for a seat in the new Parliament. New South Wales furnished contributors. Far away in villages, a thousand miles from Melbourne, a Roman Catholic priest, or an Irish publican, might be seen canvassing for subscriptions. Sixty-six committees co-operated in New South Wales. Several thousand pounds more than were needed to qualify him for a seat in the Assembly were presented to him. Assuming importance, he declined to join a movement which could bring him into contact with Mr. Fawkner, who had animadverted upon him.

He wooed the electors of Villiers and Heytesbury in 1856. He struck the cord which Dr. Lang harped upon, by saying that the Royal power of disallowing bills must be destroyed, and means devised to rouse a "national Australian spirit to

[58] Mr. J. P. Fawkner, ever alert, disentombed from an Irish paper a letter from Victoria urging Mr. Lucas, editor of the *Tablet*, to reap the harvest of money and political power ready for his sickle in Victoria, where "no position, political or otherwise, would be out of his reach." Lucas died, and Fawkner suggested that, as the editor of the *Tablet* could not be obtained, Mr. Duffy, of the *Nation*, had been sent to become "chief ruler."

[59] He was correct in thinking it harmless in his hands. He did little at the Bar, and speedily reverted to his former pursuits.

force us all into one." He was in a critical position with regard to one question. His patron, O'Shanassy, supported denominational education. Some subscribers to the Duffy fund were equally eager for united common education; and Duffy had in Ireland advocated views widely different from O'Shanassy's. An elector questioned him on the subject, and on that of State aid to religion. He replied: "As to granting State aid to religion, although all his life a voluntary, he thought in this new country many districts would become semi-barbarous if aid to religion were withdrawn, and he therefore did not think it would be wise, or just, or statesmanlike to do so. . . . He was in favour of continuing both the national and denominational systems in order that all classes might be satisfied and educated."[60] The motive of his professions might be deduced from his declaration soon afterwards that "he had never known a better or truer man than John O'Shanassy."

Mr. Duffy denounced the government in Victoria, and affirmed the necessity of hurling them from office. One of them bore no malice against anyone who might be useful to him, and in 1873 assisted in recommending that Duffy should be decorated by the Queen. Rumour ran that it was hoped that the good graces of the disaffected in Ireland might be won by a boon conferred upon Duffy. Vain hope! In the following year the rebel, with a ribbon not of Irish repute, was refused a hearing at a banquet in Dublin in commemoration of Daniel O'Connell. Instinct taught O'Connell's admirers that there was a wide gulf between him and the vain but subtle conspirator, who, after quarrelling with O'Connell's resolution to shed no blood in agitation, had worn the livery of the Queen and pocketed a pension.[61] But by cunning paragraphs sprinkled appro-

[60] When an *Argus* (May 1856) reached the room of an editor in New South Wales a curious scene occurred. He and a friend had been discussing Duffy's character. The editor thought he would prove staunch, but agreed to judge by the opinions he might express on those subjects on which, if he should adhere to past professions, he would forfeit O'Shanassy's favour. The friend averred that Duffy would cling to O'Shanassy, as necessary to present purposes. The sentences in the text were read. "What say you now?" said the friend. "I give him up," quoth the editor.

[61] "Just for a handful of silver he left us,
Just for a ribbon to stick in his coat."
"The Lost Leader."—R. B. Browning.

priately in Europe or in Australia, Duffy generally avoided such a failure as befel him in Dublin. He trafficked at one end of the world on distinctions acquired at the other. All who watched his career felt that when he advocated union of the Australian colonies it was with a lurking idea of separation from the mother country. Opportunity and vanity turned his thoughts to a pension and a title. Incapable as an administrator himself, under the shelter of the abler O'Shanassy he held office long enough to claim a dole from the sovereign against whom he had conspired.[62] Steadfast only to betray, he quarrelled with the patron who had warmed him into affluence. One cause of difference was a protest made by Duffy against the inclusion of a patriotic phrase in a Governor's speech. O'Shanassy refused to perpetuate in Australia the rancour of Irish quarrels, and Duffy never forgave him.

In 1856 he was dependent upon O'Shanassy, and as O'Shanassy advocated universal suffrage, it was manifest that the Constitution was in serious danger of receiving short shrift.

When men like Henry Miller, in seeking the support of an Upper House electorate, advocated universal suffrage for the Assembly, and leading colonists joined intriguers suckled in sedition in making the same demand while wooing the electors for the Lower House, there was little prospect that electors would display a moderation not affected by candidates. Nevertheless, although the goldfields constituencies seemed as a rule to elect the worst candidates, the metropolitan and rural electorates created by the new Constitution generally elected the best. The five members chosen for Melbourne indicated a balanced public opinion, which, if wisely availed of in the Parliament, might have averted some troubles. Mr. David Moore,

[62] Because he had been a rebel in Ireland impetuous colonists presented him with thousands of pounds in Victoria. Because he made an *ad misericordiam* appeal the Crown awarded him a pension for his colonial doings, and afterwards made him a knight. Challenged with these incongruities, an admirer of Mr. Gladstone (Prime Minister when Duffy was decorated) said to the author (in England): "Oh! I don't know anything about the affair. I fancied Duffy had been transported, and was knighted for some service in the colony."

a merchant; Mr. Michie, a barrister; Mr. Stawell, the Attorney-General; Mr. J. T. Smith, who had been four times mayor of the city; and Mr. O'Shanassy were elected in the order named. Among the defeated was Mr. Ebden, who had returned from England, and whose financial abilities the new voters had not the wisdom to secure. Messrs. McCulloch, Langlands, and Greeves were also beaten, but Ebden was last on the poll. One obstacle to Ebden's success was his distrust of that lowering of the suffrage to which so many pledged themselves.

The process of transfer of power from the mass of former electorates to the new elements introduced by an extension of the franchise is never so rapid as arithmetic alone would render probable. Unless the new voters outnumber the whole of the old (in which case the alterations are revolution rather than reform), some time elapses before the full effect of a change can be felt, and the local guides of opinion give place to new men. On the whole, the country members of the past were returned to one or other of the new Chambers. It was noticeable that the men who had been eager to claim power under the new Constitution so little comprehended its parliamentary essence that they did not entrust a responsible office to a member of the Upper House. The defeat of Mr. Fellows at the elections for the Upper House deprived them of his services there in the first instance, but one of the thirty members might have joined the ministry if any colleague of Mr. Haines would have been patriotic enough to give place to him. It was one of those blunders worse than crimes, and exercised baneful influence. Ministries frequently violated the spirit of the Constitution,[63] and placed no responsible colleague in the Council.

Thus the aim of the Constitution, that on formation of ministries the implied sanction of constituencies of both House, should be obtained, was set at nought. The country was defrauded of the check intended to be imposed upon intrigue, and lost the

[63] The 18th section provided that of the responsible officers "four at least shall be members of the Council or Assembly," making no distinction between the two Houses as to the presence of Ministers.—*Vide supra*, p. 49.

opportunity of pronouncing in the manner contemplated by the Constitution, through constituencies of both Houses, upon the fitness of a ministry. The provision for concert between the two Houses, and for at least a minimum of constitutional representation of a responsible ministry in the Council, was evaded. Frequently the country was left without any knowledge of the opinion of the constituencies of the Council, and a member, by accepting an irresponsible seat in the cabinet, evaded the spirit of the Constitution, which demanded that some one at least should show, by an appeal to an electorate of the Council, that he retained its confidence. Half the miseries of Victoria for twenty years were caused by this blunder in drafting the Act, and by the shortcomings of cabinets in administering it. Shorn of its constitutional rights, the Council for a time lost the repute to which the Constitution entitled it, and when by spasmodic efforts it strove to assert its constitutional position, past irregularities were cited to justify disregard of the Constitution. Impropriety followed impropriety, and overbearing ministers claimed that even the legislative functions of the Upper House should be stifled on the demand of a majority in the Lower. When these claims were resisted ministries tacked foreign matter to Appropriation Bills, which the Constitution distinctly enabled the Council to reject, but not to alter. When the bills were rejected in the last resort, offending ministries, with a kind of wolf-logic, assailed the Council as the cause of the "deadlock" created by ministers themselves.

The peculiar circumstances under which power was unconstitutionally seized in Victoria, and the failure of the scheme to induce New South Wales to follow an evil example, have necessitated so forward a glance that it is convenient to scan in this place the manner in which various Governors in Australia confronted the new duties imposed upon them by the introduction of responsible government. Their sphere was contracted; but the importance of the duties remaining, and of the new functions accruing, could hardly be over-estimated.

In former times each act of the executive government sprang directly from the will and sanction of the Governor. Responsibility for his actions was theoretically complete, but

the diameter of the globe intervened between him and the Crown. His government was a despotism tempered by consciousness that after a lapse of time he might be called to account by his Sovereign. He might be rebuked or removed, but his conduct could not be controlled by advice when decision was needed. The Crown selected prætors and furnished them with general instructions. In time the growth of the community, and the multiplication and expansion of its pursuits and resources, called for modification of the system which made one man responsible for every executive, legislative, and administrative function in his territory.

Bligh's deposition caused no alteration in principle. The men were changed. Macquarie, a soldier, superseded the sailor Governor. The New South Wales Corps (deemed mutinous) was withdrawn to England, and Macquarie, with prætorian bands composed of his own and another regiment, assumed a control as arbitrary as that of his predecessors. His perverse vanity plunged him into excesses and eccentricities which caused the appointment of a Special Commissioner. Mr. Bigge's Reports (1822 and 1823) led to the Statute 4 Geo. IV. cap. 96 (1823), providing for the more effectual government of the two southern colonies then existing; and a Charter of Justice established a Supreme Court.

The Constitution of 1823 imposed on the Governor a check, rather moral than coercive, in the making of laws. His Legislative Council was nominated by the Crown, and even if the members dissented from or protested against a "law or ordinance," the Governor could pass it, and it had "full force and effect," subject to the King's pleasure. The Governor only could initiate legislation. The subsequent Statute, 9 Geo. IV. cap. 83 (1828), did not materially restrict his powers, though, by enlarging the Council (still entirely nominated by the Crown), it increased the moral pressure upon him. Augmentation of departmental business compelled him to leave many details to trusted officers, but he remained responsible for all acts of the government.

Governor Darling, when his Council was enlarged, retained John Macarthur and Robert Campbell amongst the unofficial nominees, and Mr. Alexander Berry, Mr.

Richard Jones, Mr. John Blaxland, Captain Philip P. King, and Ed. C. Close, of Morpeth, were chosen, not as advocates of particular views, but as men deservedly respected in the community, and commanding public confidence. The Governor was gradually relieved of labour upon petty details, but his responsibility was undiminished. Representative institutions, liberty of the press, and trial by jury were meanwhile demanded by Wentworth, and were step by step attained.

"The constitutional right of choosing their own representatives" was still solicited or demanded, and was in part conferred by the Statute 5 and 6 Vict. cap. 76 (1842). The Governor then withdrew from legislative debates. Former Governors had discussed with closed doors in the nominated Councils, but Sir G. Gipps threw them open to the public. Though in the new House the Governor no longer spoke, he had a potential voice in creating his champions, one-third of the members being nominees of the Crown. He had, moreover, the power to veto bills. Except when a Secretary of State sent an officer to the colony, the Governor was the dispenser of patronage. Thus he became the butt for all complaints against public officers; the supposed obstacle to all useful legislation which the elected members desired. No election of members could disturb the solid phalanx—one-third of the House—which the Governor was said to hold in the hollow of his hand. He, meanwhile, assailed as an autocrat, received imperative instructions from England, and few Governors had the strength of character displayed by Sir G. Gipps when he declined to promulgate Lord J. Russell's Orders-in-Council subdividing New South Wales and abolishing sales of land by auction.

The compound state of subjection to the Crown and dependence upon legislation in a House of which two-thirds were elected by the people demanded peculiar talents on the part of a Governor. Under any circumstances the new state must have been transitional. The abilities of Wentworth hastened its end; but the rush of population to the goldfields in 1852 would have precipitated such measures as he induced his countrymen to pass in 1853, even if he had not anticipated fate by the Remonstrances

which he caused the Council convened in 1848, as well as that elected in 1851, to address to the Throne. Sir C. Fitz Roy, with the aid of Deas Thomson, encountered and overcame the difficulties caused by the open contention of Wentworth and the personal antipathies of others.

The greater difficulties and the weaker support which fell to Mr. Latrobe's lot subjected him to the melancholy conviction that he had not saved the Queen's authority from being trampled in the mire, and that he had called down upon himself the condemnation of the London *Times*. The compound Legislative Council did not save him from any consequences of failure. Elected members sometimes embittered the antipathies which the *Argus* excited against him. The shuffling instructions of the Duke of Newcastle afforded no aid in dealing with the difficulties with which Earl Grey's Orders-in-Council had swathed the Crown lands. Yet on Mr. Latrobe's head were poured the phials of the general wrath. Sir C. Hotham confronted and put down some evils; but the strife wore out the striver, and his career was like that of a meteor flashing through the air on its appointed errand, but whose place knows it no more. No public affairs could be permanently managed by such means, nor at such a sacrifice.

The various Governors on whom it devolved to introduce the new order of things under responsible government had little to guide them. Ten years' trial of it in Canada had furnished hints, but they were scattered in Blue-books. All men could not hope to vie in natural sagacity with Sir Charles Metcalfe. The didactic Earl Grey had informed a Nova Scotian Governor that "the power and influence of the Crown are by no means to be ineffective or unimportant" under responsible government; that the Governor would "refuse to assent to any measures" which might appear "to involve an improper exercise of the authority of the Crown," but that he must use his power to check extreme measures with "the greatest possible discretion," as it was neither possible nor desirable to govern the province "in opposition to the opinion of the inhabitants."

Other Secretaries of State depicted with more or less clearness the functions of Governors. Mr. Cardwell told

Sir C. Darling that Her Majesty's Government did not "wish to interfere in any questions of purely colonial policy, and only desire that the colony shall be governed in conformity with the principles of responsible and constitutional government, subject always to the paramount authority of the law." The view that with responsible government a Governor of a British colony becomes a ministerial puppet can be accepted only by the unwise. Those who, not being ignorant, would maintain that view have often ulterior designs incompatible with loyalty. When law is respected, when ministries are honourable, when a colony is unshaken by alarm and distress, the Governor may appear to have little to do beyond fulfilling those functions in virtue of which he is the crowning of the social edifice in the colony. But "the providence that's in a watchful state" requires upon occasion the exercise of highest wisdom or tact by a Governor; and if he be found wanting, disorder may ensue.

If a rash or designing ministry find him false to the law, they may demand from him disloyalty to the Throne. Having abandoned the principle that he will do no wrong he can never regain firm ground, and must become the creature of accident. His relations to the Crown are a source of strength or of weakness in proportion to his own perspicacity and firmness. He has to guard not only against wrongdoing, which may lead to early mischief, but against carelessness, which may heap up troubles for his successors. Loyal to the Crown; firm to obey the law; impartial to public men; frank towards his constitutional advisers, but never consenting to be their creature or partisan; solicitous for the welfare of the colony, and wary in the exercise of the Royal prerogative, especially in summoning or dissolving Parliaments—a Governor can find worthy employment for the highest faculties. If he have tact, and be blest with the presence and temperament which innately command respect or affection, he may succeed where men apparently abler than himself have failed. He is fortunate if during a colonial career he is not confronted by difficulties which call upon him to exercise faculties of a high order, in an office in which he represents Royalty, receives within fitting bounds Royal instructions, and acts beyond those

bounds as a constitutional ruler, subject only to the supreme control of the law.

Sir W. Denison had one problem to solve with which none of his contemporaries in Australia or in Tasmania were called upon to deal. He had to nominate the Upper House. He consulted his temporary Executive Council, and waited until the completion of the elections for the Lower House enabled him to find advisers amongst the representatives. It is only with the demission of responsibility by the Governors as to certain functions that it is needful now to deal. In forming the Upper House it was agreed to tender the office of President to Deas Thomson, but he declined it. The elections were not in New South Wales put off to the latest moment as they were in Victoria, and the two Houses met in Sydney in May 1856. The Governor was practically responsible at that date as of old. Mr. Donaldson, the new Prime Minister, became a member of the Executive Council in April, with Sir William Manning and Darvall. Manning, who had been Solicitor-General under the old order of things, was elected for South Cumberland, and agreed to become Attorney-General under Donaldson. He was the only officer of government who retained a political position in the metamorphosis of the time. There was no incongruity in his conduct. The Constitution as it stood was the work of Wentworth, and had been supported by himself and most of his colleagues. Darvall, who became Solicitor-General, was in a very different position. He, with Cowper and Parkes, had intrigued against the Constition, and against the men who were to be his colleagues in the first Administration. When he thus grasped at office he knew that the disappointed Cowper would become his opponent.

Mr. G. R. Nichols, who had so feelingly appealed for consideration in advocating Wentworth's Bill, though not robust in health,[64] accepted office with Donaldson, by whose side he had frequently voted. There was some doubt as to the manner in which the fifty-four members of the Assembly would look upon the new arrangements. There was no doubt that Cowper, Parkes, and others would be discon-

[64] He died in the following year.

tented. The appointment of their old comrade Darvall gave no gratification to them. In his opening speech Sir W. Denison briefly alluded to the abolition of the conditions under which

"the Governor only was responsible for the policy of the government, and for the measures submitted to the Legislature. . . . As in my former relation to you, I was always most anxious to press upon your notice whatever could in my opinion be conducive to the interests of the colony, so now I shall be ever ready to carry into effect, as head of the Executive, such measures as the Legislature may consider best calculated to enhance the general prosperity."

He had thought it right to avail himself of the advice of members returned to the Assembly in choosing the members of the new Council, but he had not formally placed his new advisers in charge of Departments, because he would thereby have caused their seats to be vacant in the Assembly; and, until after the meeting of Parliament, there was no power to issue new writs. It was proposed to repeal Wentworth's clauses requiring "a majority of two-thirds of the Legislature to effect changes in the system of representation or the principles of the Constitution."

In nominating the Council circumspection had been used. Sir Alfred Stephen,[65] the Chief Justice, was President. Mr. Justice Dickinson and Justice Therry, Edward Broadhurst, a brilliant barrister, and one or two leading solicitors, guaranteed a knowledge of law in the new Chamber. Deas Thomson's sagacity had been secured. Thirty-one members were appointed on 13th May 1856. Cowper immediately strove to oust the ministry from their inchoate position, and it was not until Donaldson had been backed by a substantial majority that (after taking part in the debates) the ministry (6th June) accepted offices of profit and appealed to their constituents. Then also the Governor, with their counsel, applied to Deas Thomson for aid in reconstructing the Departments, and distributing the public business.[66] The constituencies ratified the conduct of the ministers, and though they did not long retain their position (they never ceased to possess a majority) their career need not be further considered at this place. Sir W. Denison wrote confi-

[65] He stipulated that he would accept no emoluments or salary.
[66] Mr. Thomson's recommendations were printed by order of the House.

dentially to the Secretary of State that though there had been much talking about the Constitution in June 1856, "the only question before the mind of every speaker has been a purely personal one, 'Why was not I asked to become a member of the government'?"

In Victoria Maj.-Gen. Macarthur, who became Acting-Governor on the death of Sir C. Hotham, was unconscious of the duty which his position demanded in the interval between the proclamation of the New Constitution and its coming into operation through the election of the two Houses, and the formation of a responsible ministry in accordance with the law. He submitted to be the creature of the junto who had seized the keys of the citadel, and had extruded their real, though temporary, guardian. It was natural that they should desire to postpone the era of constitutional responsibility, and the two Houses were not convened until 21st November, six months after Sir W. Denison had summoned the Sydney Houses. Having assumed none of the responsibilities of his office, Macarthur had none to lay down. As the mouthpiece of others, he asked the Representative Chambers "to extend the basis of the suffrage," to deal with the laws relating to the sale and occupation of Crown lands, and other affairs.

The speech congratulated the Houses on the "financial and commercial prosperity." But no word of gratitude for the labours of Sir C. Hotham was employed. That he had found the colony plunged into what appeared cureless ruin in June 1854, and had left it redeemed from disaster in December 1855, might have called for recognition from the Queen's Representative in 1856.

In South Australia, owing to the protraction of the session, which commenced in November 1885, and terminated in June 1856, Sir R. MacDonnell was unable to address the two Houses until April 1857. He congratulated the new Parliament upon the enlarged powers conferred upon it.

"Yet, whilst relieved by the existing Constitution of much responsibility, which till lately had attached to my office, I feel that a new and equally grave responsibility will arise whenever, with none between the Representative of the Sovereign and the people, it may become the duty of the former to give the fullest constitutional development to the wishes of the country. That responsibility I do not shrink from, satisfied that a

fearless and honest desire to act up to the liberal spirit of the Constitution will always ensure the support of a South Australian Parliament."

He had formed his ministry out of official materials before the Houses met. A member of the elected Upper House was included in the ministry, which contained the former officials, Messrs. Finniss, Hanson, and Bonney. Another official of former days, who became a responsible minister, was destined to achieve a rare distinction in the intricate domain of the law of real property.

Mr. R. R. Torrens, whose connection with one of the founders of the colony had led to his appointment (in 1841) as Collector of Customs,[67] became the Treasurer, and Sir R. MacDonnell might reasonably hope that, if departmental capacity would ensure stability, his first ministry would be strong.

In Tasmania Sir Henry E. F. Young informed the new Parliament (3rd December 1856) that as soon as the returns to the writs

"of election for both Houses had supplied the constitutional elements, out of which to select the first administration, that task was at once entered upon and accomplished, and the ministry thus selected being dependent for its tenure of office on obtaining your support, will be, so long as they possess that support, the virtual representatives of Parliament, and the actual responsible government of Tasmania."

He hoped that the ministry and "the Parliament would be incited to use their powers with such moderation, prudence, and patriotism as will be calculated to acquire a good repute for the first session under the new Constitution, and to establish a significant and happy augury for the future." He assured them of his "earnest wish to co-operate" in maintaining good government, and trusted that the Divine blessing might crown their labours. He was supported by much sympathy out of doors in desiring a fair trial for his new ministry. The Attorney-General of the past, Francis Smith, sought and obtained the suffrages of the electors of Hobart Town. Mr. T. D. Chapman, once

[67] Mr. Torrens was struck by the contrast between the facility of transfer of shares in ships and the difficulty and expense attendant upon transfer of real property. Becoming member for Adelaide in 1857 his position secured him a hearing. But it was not until he quitted office as responsible minister, and devoted himself to the reform of the law, that, in January 1858, the Torrens' Act—as the Real Property Act of South Australia was called—was passed.

prominent in denouncing Hampton's contumacy, allied himself with the new ministry as Treasurer, having been returned at the head of the poll for the metropolis; while Colonel Champ, the late Colonial Secretary, resumed that office as head of the ministry. Both of them secured a renewal of the confidence of their constituents, and it was not anticipated that within five months three ministries would have perished before the ability of Francis Smith enabled him as Attorney-General to form a ministry whose life would be measured not by months, but by years.

Thus, with some dignity, in New South Wales, South Australia, and in Tasmania, did the several Governors lay down a portion of their responsibilities.

Western Australia meanwhile, under Mr. (afterwards Sir) Arthur Kennedy, struggled with natural and artificial difficulties. The colonists remonstrated against any charges, "direct or indirect," resulting from the presence of the convicts they had asked for, and insisted that the introduction of free immigrants should be promoted. If those immigrants should "fail to find immediate employment," a portion of the Parliamentary grant "might be kept in reserve" to maintain them. Mr. Labouchere, in replying (1856) to these remonstrances, averred that "the outlay of British funds for local expenditure alone, up to the present time, has been at the rate of nearly £90 for every convict transported." With loyalty, but doubtless with distaste, Governor Kennedy, from 1855 till 1862, addressed himself to the uninviting task of managing his prison-colony. Blue-books attest his attention to discipline, to medical treatment, to diet, and general control, which he thought should be "such as to unmistakably deter men from re-entering" public life. The details of convict management may have been, as the colonists contended, less offensive in Western Australia than elsewhere, but they were nauseous still, and the condition of the colony need not be enlarged upon at the period of the introduction of responsible government in other portions of Australia.

CHAPTER XVII.

EXPLORATION.

The history of the Australian Colonies may after the year 1856 be much condensed. Results rather than details of events will suffice. Only pilgrim fathers command the interest which justifies a large mingling of biography with the general narrative. A few familiar names will still recur. Some incidents (such as that in which an imprudent Governor strove to do violence to the Constitution of New South Wales in 1861) will deserve dramatic treatment; but, in the main, personal details will be unnecessary.

Exploration received a temporary check throughout the continent after 1848. Commercial calamities, the distraction of labour to California, the all-absorbing pursuit of gold, in turn diverted public attention. In 1854 Mr. Austin, an assistant-surveyor, led an expedition which only added proof of the sterility of Western Australia and of the endurance of her explorers. If the barren honour of naming East Mount Magnet on his elliptic route from Perth to the waters of the Murchison be a title to fame he acquired it. He saw near it in 'Carved Cave Spring' numerous representions by the natives of human hands and of the feet of animals carved on the hard rock. Farmer, a lad in the party, shot himself by accident, and was taken onwards till he died. The aboriginal members of the company, though themselves reduced to the utmost extremity by thirst, resigned to the lad their share of the water carried during two days.[1] *Horret cognomine terra.* Austin buried the boy

[1] Howitt's "Australia, Tasmania, and New Zealand," vol. ii. p. 126.

amidst the weird depression of his companions, and called a neighbouring hill Mount Farmer. The dreaded poison plant was fatal to several horses, and Austin's expedition only proved that barrenness reigned in regions not known before.

The next expedition, though prompted by private liberality, was undertaken by the Imperial Government. Mr. W. S. Lindsay, M.P., a shipowner, offered funds. Mr. Uzzielli in England proffered £10,000. Search for relics of Leichhardt's expedition furnished one stimulus, but discovery of useful territory was in view. Mr. Augustus C. Gregory, of Western Australian fame, was the leader. Mr. H. C. Gregory was assistant. Dr. F. Mueller, whom Mr. Latrobe had brought into notice by appointing him Government Botanist in Victoria, accompanied the expedition as botanist. In July 1855 Gregory left Sydney with a barque *Monarch*, and a schooner *Tom Tough*, sailing through Torres Straits. On the 24th September he discharged the *Monarch*, ordered that the schooner should meet him at the Albert river in the Gulf of Carpentaria, and committed himself to his land risks at Point Pearce in Cambridge Gulf in September. He examined the sources of the river Victoria (discovered by Wickham and Stokes in 1839), and explored eastward the watershed of the Roper. The *Tom Tough*, after undergoing repairs in consequence of grounding at the Victoria river, had sailed. When Gregory reached the place appointed for meeting the schooner (Sept. 1856), she was not found, nor was there any record that she had been there. He pursued his land journey at once, his provisions being insufficient to warrant delay. Leaving information (buried and designated by marks on trees) for the use of the schooner's crew and the guidance of Mr. Baines, the artist who was with them, he travelled eastward, and reaching the Burdekin river trod almost on the tracks of Leichhardt. But the country discovered by Leichhardt was occupied by squatters in 1856. On the Dawson river, and thenceforward on his way to Brisbane, Gregory found hospitable welcome. After a voyage of 2000 miles by sea, and a land journey of 5000 miles, the explorer arrived at Brisbane (16th Dec., 1856). Though the expedition was successful, it threw little light on the character of the interior.

One of Sturt's companions of 1845 was to signalise himself in successive expeditions, in which no privation deterred him until he had planted the British flag at Central Mount Stuart, in the heart of the continent, and conducted a band of South Australians to the shores of Van Diemen Gulf. John McDouall Stuart had been fired with the hope of distinguishing himself since the days of his labours with Sturt; but, though heroic while at work, was not thought to be the man who would inspire the colony with gratitude for a great deed.

In 1856 the South Australians still sought for gold. Mr. Babbage searched in vain, but found springs and reservoirs, previously unseen, near Lake Blanchewater. Mr. Goyder, the Deputy Surveyor-General, was despatched in 1857 to survey the country seen by Babbage. He returned with glowing accounts, which seemed incredible, but excited hope. Where others had seen sandy wastes and saltest lakes he had found pleasant pastures and fresh streams. The imagined Lake Torrens was agreeable in his eyes. He saw, or in mirage he thought he saw, islands with rocky cliffs in deep fresh water. In his own hallucination he concluded that Eyre and others had been deceived.

The public longed to crowd upon the region which was transmuted from a desert to a pastoral elysium. The government sent the Surveyor-General, Colonel Freeling, to spy out the land discreetly, and before the close of the year he reported that Mr. Goyder's discoveries had "all been the result of mirage."[2] The fresh water Goyder had seen was but temporary storm-water. In the brief interval between his and Freeling's visits the shallow lake had receded half a mile. The land was as desolate as it had formerly been deemed. Other explorers were busy in 1857. Mr. Hack and Major Warburton (H.E.I.C.), Commissioner of Police in the colony, traversed the Gawler Ranges in search of available lands.

In 1858 the government authorized further exploration. Mr. Babbage was to examine the country between Lakes

[2] Mr. Goyder afterwards expressed deep regret at having been "led by the novelty of the discovery of an apparent sea of fresh water" to suppose that the waters he had seen north of Blanchewater were "other than flood waters, or permanent."

Torrens and Gardiner, and thence northwards. While he spent months in a petty district, A. C. Gregory having no vehicles of any kind, but carrying his supplies on horseback, startled the colony by arriving overland from Moreton Bay with his brother and a small band of servants. Leaving the occupied districts of Moreton Bay in April 1858, Gregory reached Adelaide in July. He traced Leichhardt's steps to the 146th degree of E. longitude, and then concluding that Leichhardt had perished from thirst when travelling westward, Gregory, with masterful ease, after examining the Thomson vainly for further traces of the lost Prussian, followed the Victoria downwards until he established the fact that the Cooper's Creek of Sturt was the Victoria of Mitchell, which was afterwards to be known as the Barcoo. Much of the country was desolate, and for days the horses had no food but withered grass, found in the deserted huts of the natives, who used it to improve their shelter from the sun. A horse discovered the casual resource. Gregory happened to camp near a native hut, and saw the famished animals wrenching the dry grass from the heterogeneous roofing. The wary leader thenceforth strove to select camps where the former labours of the natives afforded such scanty and strange forage. He speedily discovered that the Strzelecki Creek of Sturt was but one of the forceless channels through which the Barcoo languidly spread its waters after heavy rains, and on rare occasions reached Lake Eyre. His appearance astonished the Adelaide public, already dissatisfied with the progress of Mr. Babbage and his men.

Major Warburton was despatched to supersede Babbage; and the latter, apprised of the fact before his successor's arrival, hastened to explore the country to the west of Lake Gairdner. There Warburton found him. Babbage procured a parliamentary inquiry, and the Commissioner of Crown Lands was driven from office for caprice when it was discovered that Babbage was superseded while strictly obeying orders. In these and other expeditions it was found that dry land existed between Lake Torrens and Lake Eyre. Babbage claimed credit for anticipating it in theory, but Warburton proved

the fact.[3] J. McDouall Stuart had been searching for pastoral lands for his employers, Messrs. Chambers and Finke. In 1859 he discovered creeks and springs previously unknown to the colonists. But he longed for more than the discovery of pasture lands. The popular enthusiasm which entrusted Eyre in 1840 with a flag to be planted in the centre of Australia, and which sent Sturt forth in 1844, was not exhausted. The idea of crossing the continent was embraced, and £10,000[4] were offered as a reward for the first colonist who would perform the task.

Friends provided means. In March 1860, with two companions, Kekwick and Head, and thirteen horses, Stuart sallied from Chambers' Creek, a tributary to Lake Eyre. Red sandhills and repulsive spinifex could not stay him. He named a pillar of red sandstone after his patron Chambers. The MacDonnell Range was called after the Governor. The coveted honour was at hand. On the 22nd April 1860, Stuart and his two comrades, finding themselves in the centre of the continent, with as much energy as their sufferings permitted, gave three cheers as they planted a flag on a neighbouring hill 2000 feet high, which he called Central Mount Stuart. They buried a bottle with a record of the fact, not knowing whether their enfeebled bodies could retrace their steps and enable them to tell what they had done. The horses were weary and thin. Scurvy was wasting the men. But they pushed on, and, at Short's Range, were only 150 miles from the track of Gregory in 1856. But impervious scrub defied their march to the sources of the Victoria, which would have conducted them to the Timor Sea. They fell back. Natives visited them peaceably on two occasions. An old man made a masonic sign to Stuart, who gazed in wonder; but when the young men repeated it Stuart returned it, and the old man patted him in a friendly manner. A few days after-

[3] The Rev. J. E. T. Woods ("Australian Exploration," vol. ii., p. 271) remarked that the Colonial Legislature behaved with shameful ingratitude to Warburton.

[4] The money was not paid when Stuart performed the task. It was said that the conditions did not permit him to receive it. Burke had crossed the continent before Stuart. So had McKinlay; and so had Landsborough. But Stuart and his companions received money grants.

wards other natives attacked them, and Stuart was compelled to fire at them. With heavy hearts the three explorers turned back, and (2nd Sept.) regained the settled districts. They had shown that water was procurable, and that hills existed in what had been deemed a level waste. On their return they found that Warburton had explored towards the great Australian Bight, only to find confirmation of the dismal report of Eyre in 1840. But they found also that from the neighbouring colony of Victoria an expedition had started (Aug. 1860) under Robert O'Hara Burke, with camels and profuse appliances, derived from private and public funds, to enable him to march to the Gulf of Carpentaria from the Cooper's Creek of Sturt.

Stuart's fellow-colonists were excited. The government contributed funds. On 1st January 1861, Stuart, with Kekwick and ten assistants, started from Chambers' Creek with fifty horses and such supplies as they could carry. In April he was at his former point of discomfiture, Attack Creek; too well armed to dread interference from savages with wooden weapons. But the land repelled him still. Repeated efforts to cross to Gregory's camps of 1856 were foiled. Though he crossed the 18th South parallel and found Newcastle Water, dense waterless mulga (acacia) scrub separated him from one of Gregory's camps about ninety miles away.

Gallant as Stuart was, he was forced to retreat. He entered Adelaide (Sept. 1861) ready to make another effort. The tidings that the Victorian expedition had succeeded in its aim, at the cost of the lives of its leader and others, deterred neither Stuart nor his compatriots. On the 23rd May 1862 he had passed his former bounds, and named the Daly Waters (after the new Governor, Sir Dominic Daly); in June he had penetrated to the Roper of Leichhardt, which he reached by following a water-channel he called the Strangways; and from the Roper he reached the Adelaide river of Stokes on the 10th July. On the 25th July he bathed his hands and face in the sea at Chambers' Bay. He had promised Sir R. MacDonnell that he would perform such an ablution if his enterprise should be successful. The Union Jack was hoisted with cheers, and a

buried inscription told that the South Australian Great Northern Exploring Expedition, which left Adelaide in October 1861, had crossed the continent, and on 25th July 1862 had reared the flag to commemorate its achievement. Stuart was attacked by scurvy on the return journey. All were in great straits from thirst. Creek after creek was found a dry channel. Borne on a litter at last, Stuart was in Adelaide, weak but triumphant, in December. He suggested at an early date the formation of a telegraphic line along his track, and the energetic colonists were prompt to form it. Their enterprise in this respect, and Stuart's repeated journeys, have entitled him to first mention in the narrative of discovery.

It is now necessary to follow the fortunes of Robert O'Hara Burke. A donor[5] unknown at the time proffered £1000 in aid of an expedition from Victoria to the north coast of Australia. Private subscriptions and a public grant of £6000 swelled the Exploration Fund. A committee was appointed to control the expenditure and appoint the explorers. The Chief Justice and Members of Parliament, the Surveyor-General and scientific men, seemed to guarantee efficient management. Gregory, spoken of as leader, declined, and recommended the appointment of Major Warburton. One Mr. Landells had been sent to India for camels, and his services were deemed indispensable in the expedition in which the camels were to be employed. He was made second in command. Burke (who had been a cadet at Woolwich, had served in the Austrian army, and in the Irish Constabulary force) was an officer of police in Victoria when the Crimean war began. He returned to England in hope of military employment, but when peace quenched that hope he resumed his occupation in Victoria. Bold and honourable, he had not the practical experience, nor perhaps the temperament, required in exploring untrodden wastes. But he was utterly unmercenary, had a noble craving for fame, and was made leader. The third officer, W. J. Wills, was surveyor and astronomical observer. One German was appointed medical officer and botanist, and another became artist, naturalist, and geologist. Ten Europeans and three Sepoys accompanied the expedition.

[5] Subsequently known to be Mr. Ambrose Kyte.

Waggons and camels swelled the caravan, which left Melbourne in August 1860. The dashing Burke was relieved by the thought that he would escape in the bush from the trammels of the Committee. Before he reached Menindie, on the Darling, Landells became insubordinate. At Menindie he resigned, and the doctor followed his example. Burke selected Wills to succeed Landells, and a man named Wright to succeed Wills. The first choice was as good as the second was bad. Burke pushed forward towards Cooper's Creek, and sent Wright back from Torowoto to Menindie, with orders that, on approval of his appointment by the Committee, he was to follow Burke with some remaining camels and supplies. The Committee confirmed Wright's appointment, furnished him with means to procure supplies, and ordered him to proceed to Cooper's Creek without delay. But he delayed till the 26th January 1861. Burke had meanwhile reached Cooper's Creek (11th Nov.) with Wills and five assistants (amongst whom was an educated person named Brahe), a Sepoy, and fifteen horses and sixteen camels. He formed a depôt near good grass and abundance of water, promoted Brahe to the rank of officer, and made expeditions (as did Wills) to probe the interior. On one occasion, while Wills was making observations of the heavens, his companion (McDonough) neglected the terrestrial duty of watching the camels. The latter strayed away (two were afterwards found in the settled districts of South Australia), and the drowsy watchman and the astronomer had to walk back ninety miles to the depôt. At last, weary of waiting for Wright and too trustful in his efficiency, Burke (16th Dec.), with Wills, King, and Gray, resolved to do or die in the attempt to cross the continent in anticipation of McDouall Stuart, whose aptitude for exploration and endurance were well known, and who had reared a flag in the centre of the land. Brahe was ordered to surrender his care of the depôt to Wright on arrival of the latter. In any case the depôt was to be maintained until Burke's return, or as long as food remained. Burke and his three companions, with one horse and six camels, happily eluded the stony desert which repelled Sturt in 1845. There had been rain enough to produce herbage, and to leave pools in the northerly

direction taken. There were intervening sand-hills presenting spinifex and scrub; but rolling undulations of what looked at a distance like a plain, and had upon it grass of more or less sufficiency, afforded food. Not far to the east of Sturt's point of failure they found a way on which in 1860 the traveller suffered little if at all from drought. Early in January they were descending a tributary of the Flinders (which they mistook for the Albert, for which they were steering). In February, Burke and Wills, worn down by famine, but triumphant, stood on the moist mangrove-covered margin of the Flinders.

It is to be lamented that an expedition fitted out at so much expense was unaccompanied by an Australian native whose skill as a hunter would have spared the carried food for emergencies. Leichhardt and others had thus prospered. Flocks of pigeons and other kinds of game were seen by Burke. His ardour and impetuosity unfitted him for the kindly patriarchal control which wins the affection of the native race, but the gentle and heroic Wills was of a different mould.

The return journey was commenced on the 21st February. Sufferings from famine and exposure were felt. An overworked camel was abandoned on the 6th March. On the 20th, 60 lbs. of baggage were cast away. On the 25th it was discovered that the man Gray had been stealing food, and previous losses of stores were thus accounted for. Burke by way of discipline gave him "a good thrashing."[6] On the 30th a camel was killed for food, as more than one had been killed before. Gray was supposed to be feigning when he declared himself too weak to walk. The solitary horse was killed for food on 10th April. They looked in vain for the relief party which Burke expected that Wright would have sent forward after taking charge of the depôt at Cooper's Creek. But for the rainy season thirst would have speedily ended their sufferings. Their scanty store of food prevented any halt to recruit the surviving camels. They staggered on with insufficient but equally divided food—Burke sustained by heroism, Wills by honour and

[6] Diary of Wills. King, who saw the punishment, said that Burke "gave Gray several slaps on the head." Wills noted down what Burke told him.

friendship, King by vigorous youth and obedience, Gray by nothing. On the 16th Gray died. Wills (when the lassitude which oppressed Gray afterwards crept upon himself) wrote: "Poor Gray must have suffered very much many times when we thought him shamming." The emaciated survivors halted a day to bury Gray, but with difficulty scooped his shallow grave. They were offering their own lives in their painful obsequies. That day's delay deprived all but the patient King of the pleasure of seeing a fellow-countryman again on earth. Natives were seen, and the wanderers strove to avoid them. Nothing transpired to show that Burke or his companions ill-used them at any time. With two camels, a little meat, and firearms, Burke and his companions struggled on to the depôt at Cooper's Creek. Burke was on one camel, Wills and King on the other, when, on the 21st April, worn almost to the last gasp, but with hearts bounding in hectic tumult, their great wish seemed to be about to be realized, and they neared the camp where they hoped to find friends, food, and the first-fruits of their achieved honours. Few words will suffice to tell why they found no friend, and were cast from highest hope to deep despair. The wretched creature Wright never relieved Brahe. He moved from the Darling, but blundered in managing the party. Scurvy attacked them. Dr. Becker, the artist and naturalist, and others, died. Natives appeared, and Wright fired upon and killed many of them at his camp on the Bulloo.

On the 29th April, while Wright was thus disobeying the order to hasten to Cooper's Creek, Brahe appeared with a cavalcade of horses and camels. Tired of waiting for Wright, and confident that Burke must have died or changed his plans, or could dispense with obedience to orders, and doubting his ability to deal with the natives who seemed to be hovering about, Brahe deserted the depôt. On the 21st April he buried 50 lbs. flour, 20 lbs. rice, 60 lbs. oatmeal, 60 lbs. sugar, and 15 lbs. dried meat; and, instructing Burke to dig (by a notice on a tree), wrote that he was departing *viâ* Bulloo to the Darling; that he and two of his companions were "quite well;"[7] that another

[7] When it became known that a stay of one day more would have enabled Brahe to welcome Burke, it was contended by some of Brahe's friends that

had been hurt by falling from "one of the horses;" that "no one has been up here from the Darling;" and that he was taking away "six camels and twelve horses in good working condition." On that day, as he rode away on his strong beast to the south-east, the gaunt forms of his abandoned leader, and Wills and King, were approaching from the north. Shouting with eager joy, the impetuous but worn-out Burke, nerved with mingled hope and triumph, would have sped to the camp on wings if the flesh had not been weak as the spirit was strong. When the site of the camp was reached the dismal truth overwhelmed him, and he flung himself on the ground in despair. The less sanguine and more patient Wills comprehended the situation at a glance, and prepared to meet it. Food was cooked and eaten. Wills wrote that day in his diary: "Arrived at the depôt this evening just in time to find it deserted. A note left in the plant by Brahe communicates the pleasing information that they have started this day for the Darling, their camels and horses all well and in good condition. We and our camels being just done up, and scarcely able to reach the depôt, have very little chance of overtaking them." Adverting to their exhausted state, and finding in it a reason for pitying the deceased Gray, Wills calmly noted the fact that the unaccustomed oatmeal and sugar seemed wonderfully to recruit the physical powers of the wanderers.

What was next to be done? Burke believed that stations in South Australia were nearer than any others, and chose the route to Mount Hopeless which Gregory had followed in 1858. Wills and King would have preferred to pursue with fainting steps the flying Brahe, but Burke's decision was accepted. On the 22nd Burke deposited, where Brahe had left the provisions, a letter, stating that on the morrow they would "endeavour to follow Gregory's track; but we are very weak. . . . We have all suffered very much

there was sickness at the depôt. The grieving Brahe himself strove to justify himself to himself by writing that he felt sure that he "and McDonough would not much longer escape scurvy." He took abundance of food with him. He carried away 150 lbs. flour and a bag of rice, with other articles. As he took so much and left so little, it seems that when he deserted his post he was confident that Burke would be seen no more.

from hunger. The provisions left here will, I think, restore our strength. We have discovered a practicable route to Carpentaria, the chief position of which lies in 140 of East Longitude. . . . Greatly disappointed at finding the party here gone." "P.S.—The camels cannot travel, and we cannot walk, or we should follow the other party. We shall move very slowly down the creek" (Strzelecki's). Natives, wandering by, gave them some fish on the 24th. On the 28th a camel sank in mud near a waterhole. He was cut up for food. On the 7th May the last camel sank from exhaustion, and the travellers, unable to follow the creek, strove to make their way towards Mount Hopeless, but the earthy plains and sand-ridges repelled them. "I suppose (Wills wrote, 6th May) this will end in our having to live like the blacks for a few months." The natives when seen were kind, gave them fish, "until we were positively able to eat no more" (7th May), and even cheered them with the exhilarating Pidgery.[8] They showed them how to make bread from "nardoo" (*Marsilea quadrifida*) after toilsome gathering and pounding of the seed.

While Burke and his comrades were thus fading away on Strzelecki Creek, a startling scene occurred within a few miles of them at the abandoned depôt.

The runaway Brahe had encountered Wright on the 29th April, at Bulloo, two days after the latter had shot a number of the natives. Wright at first moved towards the Darling, but at Koorliatto thought that it might be well to return with Brahe to the Cooper's Creek depôt. On the 9th May they visited it. They did not dig to ascertain whether the provisions left by Brahe had been touched, or whether Burke had returned. They left no record of their visit. Wright said they "found no sign of Mr. Burke's having visited the Creek." If they had searched they would have found Burke's letter. They rode away, reached the Darling on the 18th June, and Wright sent to Melbourne the information given by Brahe to Wright. He also reported

[8] On the upper sources of the northern waters which find their way to Cooper's Creek, the natives triturate the leaves and twigs of a shrub. They pack it tightly in closely-woven bags, and it forms a precious element of barter. A small quantity chewed in the mouth is said to stimulate. The plant is also called Pituri. The botanical name is Duboisia Hopwoodi.

that the natives were bloodthirsty. They meanwhile were acting as good Samaritans to those whom Wright had neglected. The baffled explorers, unable to move towards Adelaide, were learning to make nardoo bread. On the 28th May an old man, Poko Tinnamira, shared his hut with Wills, to whom the tribe gave fish, and for whom they insisted on carrying his bundle "in such a friendly manner that I could not refuse." On the 30th May Wills revisited the depôt, and left a record in these words:

"We have been unable to leave the Creek. Both camels are dead, and our provisions are exhausted. Mr. Burke and King are down the lower part of the Creek. I am about to return to them, when we shall probably come up this way. We are trying to live the best way we can, like the blacks, but find it hard work. Our clothes are going to pieces fast. Send provisions and clothes as soon as possible. The depôt party having left contrary to instructions has put us in this fix. I have deposited some of my journals here for fear of accident."

If Wright and Brahe had left a record of their visit to the depôt three weeks previously Wills would have found it, but it is hard to say whether a knowledge of that visit would have sharpened or blunted the poignant feeling of the deserted sufferers. In spite of all difficulties, Wills kept a diary. It was a week before he could rejoin his comrades, though he was fed by the natives till "unable to eat any more." Burke and King were supplied with fish by the same nomadic friends. After rejoining Burke Wills vainly sought the natives, who had moved their camp. Prostration laid a numbing gripe upon the explorers, but with King the food seemed to agree "pretty well." The coldness of the nights pinched their wasted forms, and their limbs refused to obey their wishes. Gathering nardoo seed, pounding and cleaning it, was the work of Burke and King when the feeble Wills was "scarcely able to go to the waterhole for water" (13th June). On the 21st June, only able to crawl from his lair into the sunshine, Wills wrote:

"Unless relief comes in some form or other I cannot possibly last more than a fortnight. It is a great consolation, at least, in this position of ours, that we have done all we could, and that our deaths will rather be the result of mismanagement of others than of any rash acts of our own. Had we come to grief elsewhere, we could have only blamed ourselves; but here we are returned to Cooper's Creek, where we had every reason to look for provisions and clothing, and yet we have to die of starvation in spite of the explicit instructions given by Mr. Burke that the depôt party should wait our return, and the strong recommendation to the committee that we should be followed up by a party from Menindie" (on the Darling).

On the 29th June, as a last resort, Burke and King consented, at Wills' request, to go in search of the natives. They collected nardoo, wood, and water, and left him. He entrusted to Burke a watch for the father of Wills, and begged King to guard it if the latter should survive. He knew that death was near them all. That day he wrote:

"Starvation on nardoo is by no means unpleasant, but for the weakness one feels and the utter inability to move one's self, for as far as appetite is concerned it gives the greatest satisfaction. Certainly fat and sugar would be more to one's taste; in fact these seem to me to be the greatest stand by in this extraordinary continent: not that I mean to depreciate the farinaceous food; but the want of sugar and fat in all substances here is so great that they become almost valueless to us as articles of food without the addition of something else."

These were his last written words. Burke's prostration was almost as complete as that of Wills. On the second day, in spite of King's efforts to cheer him, he could rally no more. He asked King to remain with him till the struggle was over. "It is a comfort to know that someone is by; but when I am dying I wish you to place the pistol in my right hand and leave me unburied as I lie." Burke succeeded in writing a few brief memoranda: "I hope we shall be done justice to. We have fulfilled our task but we have been aban. . . . We have not been followed up as we expected, and the depôt party abandoned their post. . . . King has behaved nobly. He has stayed with me to the last, and placed the pistol in my hand, leaving me lying on the surface as I wished." Burke's wish being obeyed there was no further need for King's fidelity. "I felt very lonely," the poor fellow said. He sought the natives. He found at a deserted camp enough nardoo to maintain him for a fortnight. He had his gun, and shot a few crows before he strayed back to the place where he had left Wills. Three crows were intended as a delicacy, but he found no one on whom to bestow them. He covered the body of Wills with sand, and, after a few days, went in search of the natives, without whose aid he knew he could not live. "They appeared to feel great compassion for me when they understood I was alone on the Creek, and gave me plenty to eat." After a few days he thought they were tired of him; but when by signs he endeavoured to explain that he would keep with them—"they seemed

to look upon me as one of themselves, and supplied me with fish and nardoo regularly." They desired to know where Burke's body was. King showed them. "The whole party wept bitterly, and covered the remains with bushes. After this they were much kinder than before." Thus was the helpless King fed and housed by the good Samaritans until September. Meanwhile the report made by Wright induced a belief that it was the black man and not the white who had played the savage when Wright shot the natives at Bulloo in April; and a search party was increased in numbers in order to cope with or punish the bloodthirsty and inhospitable tribes. The absence of tidings excited apprehensions in Melbourne before Wright returned to the Darling in June. The father of Wills was anxious to conduct a search-party; but the Exploration Committee selected a competent leader in the person of Mr. Alfred Howitt,[9] who started to the Murray river, where he proposed to organize his small party. He met Brahe with Wright's despatches, which reported that nothing had been heard of Burke since 16th December 1860, that Brahe had left the Cooper's Creek depôt, and that the natives had "proved hostile." Wright after reaching the Darling had gone to Adelaide on private business. Howitt, with Brahe, visited Melbourne; and on the 4th July, with enlarged powers, Howitt started for Cooper's Creek, with twelve persons, amongst whom were two natives. The government sent the steam-sloop *Victoria* to the Gulf of Carpentaria to search for traces of Burke. Mr. Orkney, a merchant of Melbourne, despatched his private yacht on the same errand. From Queensland an expedition went by land under F. Walker, who had been employed by the Queensland government as commandant of mounted natives. The Victorian government commissioned him. Intelligent, active, and accompanied by several natives, he was not likely to fail. In little more than three months, striking a north-west course from the Barcoo, he descended the Norman, crossed to the Flinders, was shown by his Australian companions the tracks of Burke's camels descending northwards and returning southwards; and shook hands with Captain

[9] Son of the popular author, William Howitt.

Norman of the sloop *Victoria*. In five months he returned to Rockhampton, but not without losing horses and suffering privations. With such a party well armed and able to procure game in abundance, Walker could easily have made the journey performed by Burke. It is lamentable to read that on one occasion twelve natives were killed and many wounded by Walker's party. Many occasions were unreported. The Queensland government despatched a separate expedition, under Mr. Landsborough, who took four natives with him, and went by sea to the Gulf of Carpentaria. He ascended to the sources of the Albert River, hoping to intersect Burke's tracks on the way to Central Mount Stuart; but returned without success, and learned from Captain Norman that Walker's land expedition had found Burke's tracks on the Flinders. Then, eager to scan for purposes of occupation the country which had thus been proved traversable in one direction by Burke, and in another by Walker, he started ostensibly to follow Burke's route; but, diverging from it, descended the Thomson, crossed the Barcoo, and struck the Warrego at about the tropic of Capricorn. Finding a cattle-station on that river he crossed to the Darling; and in June 1862 was in Melbourne.

After noticing the ease with which, aided by natives, Walker and Landsborough traversed the continent, it is convenient, before following Howitt, to mention an expedition from South Australia led by Mr. McKinlay. All colonists were stirred to efforts to relieve Burke or ascertain his fate, and South Australians never lacked energy. A "Burke Relief Expedition" left Adelaide in August 1861. Natives accompanied it. Camels, horses, oxen, and a hundred sheep were taken. The ease with which an explorer sometimes moved through territory which had defied his predecessors was shown by McKinlay. When Eyre in 1840, and Sturt in 1844-5, strove to penetrate the sandy northern wastes, they had nothing to guide them to springs of fresh water near their paths. The process of pastoral occupation had in 1861 sprinkled even those wastes with advanced posts where food could be obtained. McKinlay travelled from Adelaide to a station (Mr. Baker's) at Blanchewater as easily as a farmer drives a cart to market. Yet

Eyre, when the country was unexplored, and in season of drought, suffered severe privations in the same region. Each station occupied, each watering-place discovered, became like stepping-stones, planted so firmly that even a child can step from one to the other. But the fixing of each resting-place for the foot was the result of toil. The season, whose showers facilitated Burke's progress, had left water on the course pursued by McKinlay, although in their enfeebled state Burke and Wills had failed to find it. That something was to be said for Burke's desire to seek aid in South Australia rather than at the Darling is shown by the fact that, in bidding farewell to a squatter at his station, McKinlay was less than 120 miles from the spot where Wills died.

McKinlay did not profit as he ought to have profited by having the natives with him. He saw many of their countrymen, but hostility was avoided until—McKinlay's natives having previously been informed that a white man was buried at a lake (Khadibaerri)—the grave of Gray was pointed out on the 20th October. McKinlay rashly concluded that the natives had murdered Burke's party. The feeble efforts of Burke, Wills, and King to bury Gray seemed to McKinlay proofs that natives had carelessly performed the work, and had not taken the pains they would have bestowed in burying one of their tribe. McKinlay, like many questioners of the aborigines, persuaded himself, after talking to one of his companions, that he could only find bones of one man because the remains of the others had been "eaten." He found hair of two colours, and was certain that murder had been committed. Accordingly he called the lake Lake Massacre, and on the following morning he pursued some natives, caught one (whom McKinlay's natives wished at once to kill), and construed his terror into admissions that the saddlery had been burned, the iron work kept, and most of the human portion of Burke's expedition eaten. The prisoner left his wife and four children while he went for a pistol left by Burke's party. One thing was clear. The man had encountered white foes, for McKinlay saw on his body marks of bullet and shot wounds. Some shot were still remaining in his breast, though the wounds were

healed. Perhaps McKinlay pitied,—at any rate he did not kill the poor creature who so distinctly bore the marks of civilization. In the morning, however, about forty natives, under the apparent guidance of the released prisoner, seemed to McKinlay hostile. Apprehending slaughter of his own people, McKinlay gave the word, "Fire." Several rounds were fired. McKinlay thought them effective, but regretted that "the greatest vagabond of the lot (his prisoner) escaped scathless." Having thus evinced his intelligence and strength, he formally deposited a document in which he wrote: " . . . Beware of the natives, upon whom we have had to fire. . . . From information, all Burke's party were killed and eaten."

Travelling was so easy in that season that McKinlay sent back his assistant Hodgkinson from Lake Massacre with despatches,—declaring that there was "abundance of water and feed at easy stages." He meanwhile, at his leisure, sought an available track towards the Cooper's Creek depôt; which he intended to visit on Hodgkinson's return. Hodgkinson returned to Lake Massacre (29th Nov.) with information that Howitt had found King alive at Cooper's Creek, and that the natives had treated the travellers with unstinted kindness. "So that I have been deceived (McKinlay wrote) as to appearances at Lake Khadibaerri. . . . Still I am under the impression that when Burke's diary is published, it will show some affray with the natives about that place, or they would not have acted towards us as they did."

The rest of McKinlay's journey needs little mention. The problem of crossing the continent, difficult in times of drought, was easily solved again by McKinlay when the way had been shown. He visited Cooper's Creek; went northwards, wondering that Sturt had seen in 1845 so few natives where there were so many in 1862, recorded gifts of necklaces, &c., to the blacks, and diverging to the east of Burke's track, curved back, and crossing it on the upper waters of the Flinders, made his way to the Gulf of Carpentaria (21st May) by descending the valley of the Leichhardt River. He suffered some privation, and was compelled to kill for food some beasts of burden, but succeeded in reaching a cattle-station on a tributary of the

Burdekin (2nd Aug., 1862) as Gregory in 1856, and Walker in 1862, had reached it before. It was proved by all these journeys that in a rainy season there would be no obstacle to exploration in any part of Australia, eastward of the 140th degree of East longitude, if the leader of the party were skilful, vigorous and prudent; and that if a few natives were employed by one acquainted with their habits, and capable of managing men, they would lighten the sufferings and increase the security of any expeditionary band.

Mr. Alfred Howitt, to whose steps it is now necessary to turn, happily combined the qualifications required. Wright's tale about the natives induced the Exploration Committee to strengthen Howitt's party; but, though offensive weapons were carried, an efficient leader could dispense with slaughter. On the 13th September, 1861, Howitt was at the Cooper's Creek depôt. On the road he saw the truth of a statement of Herodotus, which was derided by Gibbon. The horses had so great an antipathy to the camels, that there was much trouble in keeping the former at the camps. Brahe was with Howitt, and assured him that the *cache* at the depôt had not been disturbed, and no search was made. No thought of the return of Burke's party to Cooper's Creek was entertained when (15th Sept.) Howitt, with a native tracker (Sandy), went ahead of others to search for tracks. Footprints of camels, which Brahe could not account for, excited surprise. Howitt diverged from the creek, leaving Sandy to examine it, and on curving back to it, met his black companions with the tidings that they had found King, alive and charitably cared for by those whose brethren Wright had slaughtered.

"Wasted as a shadow," but sheltered in the "wurley" (or hut) constructed for him by his hosts, no man could recognize in King the active young man, once a soldier, who had accompanied Burke. He was too weak to speak clearly at first, while, gathered around in manifest delight, the tribe watched the meeting of Howitt and their guest. On the 18th, somewhat recruited, King showed the spot where lay the remains of Wills, protected as well as the feeble King could protect them, with sand and rushes. Howitt had no Prayer Book with him, but with a feeling of

solemnity shared by his comrades, read on that lonely waste the chapter in which St. Paul, with words which shall never die while human speech remains upon the earth, declares—"this corruptible must put on incorruption, and this mortal must put on immortality." Over a grave duly made branches were laid to signify to the natives by their own tokens that the spot was not to be disturbed. The ceremony was painful to Howitt, and so overcame King that a search for Burke's body was postponed, and Howitt (21st Sept.) was fain to seek it without King's aid. The pistol placed in Burke's hand by King was found loaded and capped. The remains were interred, wrapped in the Union Jack; and, as in the case of Wills, an inscription on a near tree defined the spot with precision.

While these rites were paid, the natives disappeared. They did not know that Howitt was unlike Wright, who shot scores of the natives at Bulloo—unlike McKinlay, who justified the name, Massacre, which he gave to the lake where Gray's body was found; or the explorer who had previously marked with bullets the body of the man whom McKinlay captured. They had reason to dread that Howitt would show his strength in destruction. He, meanwhile, shrank from leaving the district without proving his gratitude to them. He traced the creek, and found that native fishermen left their nets and eluded him. He found their camp, and there was much commotion, though they "seemed very friendly." He showed the presents he intended to give, and invited the tribe to his camp. On the following day, nearly forty in number, they went thither. Tomahawks, knives, red ribbons for the children, made all eyes glitter. "I think (Howitt wrote) no people were ever so happy before, and it was very interesting to see how they pointed out one or another who they thought might be overlooked." They seemed to understand that they received gifts because they had been kind to King.

Howitt, possessed of means, and fitted to explore, would have pursued his journey gladly, but felt bound to return with the recovered King, and with the disinterred journals and notes of Burke and Wills. Among other proofs of his aptitude one incident may be mentioned. When he revisited

Cooper's Creek he obtained in a few hours fish enough to have supported Burke and his companions for weeks. Yet Brahe had dreaded to remain at the depôt, and Burke and Wills were dependent on the charity of the natives. Howitt returned without loss of a beast of burden, and his tidings were in the hands of the government in Melbourne in November 1861.[10] He was immediately deputed to bring back to Melbourne the remains which he had interred at Cooper's Creek. Those who suggested that the lonely spot where they fell was an appropriate grave were derided. The Victorians were roused to bestow upon their lost explorers a funeral which would reflect honour upon the colony.

On the 9th December 1861 Howitt was again on his way to Cooper's Creek. During his absence McKinlay had been there, and had marked trees with his name.

It may be remembered that McKinlay, from South Australia, and Walker and Landsborough, from Queensland, were seeking for traces of Burke when Howitt found them. Howitt was prudently instructed to store food at Cooper's Creek for the use of any explorers who might resort thither. In various expeditions he reached Mount Hopeless, which in a drier season Burke failed to find, and also established a route between the depôt and Lake Hope. The accuracy of communication between the native tribes was proved by the fact that they told Howitt that McKinlay was hemmed in by floods in March 1862, far to the north and on the borders of the Stony Desert of Sturt. McKinlay's journal confirmed their tale. They announced also that a freshet was descending (the Barcoo or) Cooper's Creek, and it came, moving through the level land at a rate of about two miles a week.

Howitt found the natives "friendly but frightened." He explored northwards to the Stony Desert. His people saw

[10] A Royal Commission was appointed to distribute the blame due for the abandonment of the depôt at Cooper's Creek, and the consequent deaths of Burke and Wills. It ascribed faults to the Exploration Committee, to Wright, and to the impetuosity of Burke; and though it could not exonerate Brahe, it refrained from condemning him, being "confident that the painful reflection that twenty-four hours' further perseverance would have made him the rescuer of the explorers, and gained for himself the praise and approbation of all, must be of itself an agonizing thought without the addition of censure he might feel himself undeserving of."

at Cooper's Creek a bull, a cow and calf, and caught a horse, believed to have been left by Sturt in 1845. How the cattle found their way to the creek could not be surmised. But the instinct of animals within its appointed range is more accurate than the reasonings of ordinary men; and though beasts may die if water is unattainable, they will, if taken far from their homes by a circuitous route, strike back through a region where they have never previously set foot, and generally find the easiest path in their course. In his journeys Howitt procured native guides to ensure the finding of water. Sometimes he impressed them by force and guarded against their escape. He followed McKinlay's tracks beyond the 26th degree of south latitude. He did not abandon his depôt until he had heard of the safe return of Walker, Landsborough, and McKinlay. Troopers with despatches from Adelaide traversed easily the land which had repelled early explorers, and squatters' stations afforded shelter and food throughout the greater part of the way. Howitt deposited at Cooper's Creek flour and other supplies for needy explorers; and carrying the remains of Burke and Wills reached Adelaide in December 1862, where the citizens were entertaining McKinlay at a banquet when Howitt arrived, and was warmly welcomed at the table. In the same month McDouall Stuart rejoiced the South Australians by returning triumphant from the north coast.

Great ceremony was displayed in Melbourne when the remains of Burke and Wills arrived. A public funeral was held (21st Jan. 1863). Public functionaries vied with private mourners in the trappings and the suits of woe. Annuities were provided for the rescued King, for the foster-nurse of Burke, and for the mother of Wills, whose sisters also received gratuities. Howitt received public thanks. The special narrator of Australian explorations (Rev. J. E. T. Woods) summed up thus: "Probably no explorer executed his task with more prudence than Mr. Howitt, and while accomplishing his instructions exactly, under circumstances of considerable difficulty, did so with less fuss and inconvenience to his followers than ever was seen in explorations before. He deserves the name of being a perfect type of an Australian bushman."

The numerous cycles traced by the various explorers in searching for Burke did not destroy the hopes of those who clung to the thought that Leichhardt might yet be alive; and an expedition was sent from Melbourne under Mr. M'Intyre's guidance. It ended disastrously. He left his party in a waterless place while he pushed forward. His assistant, a medical man, with others, craving for drink during M'Intyre's absence, took out the spirits and indulged in wild orgies. The miserable horses strayed hither and thither and died of thirst. M'Intyre returned with water only to see the wreck. He himself found his way afterwards to the Gulf of Carpentaria; but the expedition was destroyed by his own improvidence and the misconduct of his people at the Paroo country. It was a sad duty to discover, if possible, Leichhardt's remains; but on the eastern half of Australia there was no further field for discovery. Tracts there were in which wanderers might die of thirst; but every main feature of the land was known, and flocks and herds were so quickly spread over it that a few years after the death of Burke, cattle were driven from stations near the Gulf of Carpentaria to the markets of Melbourne and Adelaide.

An expedition was fitted out in Queensland in 1864 to form a settlement at Port Albany, Cape York. Mr. Jardine, magistrate at Rockhampton, proceeded thither by sea; and two of his sons with a surveyor and three other white men, and Eulah and three other aborigines of the Rockhampton and Wide Bay districts, went overland with cattle and horses. After leaving (Oct.) the then northernmost homestead at Carpentaria Downs, they trended towards the east shore of the Gulf of Carpentaria. The natives followed the travellers, as was their wont, whether friendly or inimical. In October, "getting tired of this noisy pursuit," the travellers recorded that they stopped it. The natives were fired at (20th Nov.) and dispersed. On the 22nd one is mentioned as having been shot. On the 23rd shortness of ammunition "alone prevented the brothers from turning out and giving their troublesome enemies a good drilling, which they richly deserved, for they had in every case been the aggressors, and hung about the party treacherously, waiting for an opportunity to take them by

surprise." On the 27th several were shot. On the 16th December it was recorded that, though the explorers "as a rule avoided making use of their superior arms," the "brothers determined to let the natives have it," and many were shot. On the 18th the natives "stood up courageously," at first, but having expended their wooden missiles, "got huddled in a heap in, or at the margin of, the water, when ten carbines poured volley after volley into them from all directions, killing and wounding with every shot." . . . About thirty being killed "the leader thought it prudent to hold his hand and let the rest escape. Many more must have been wounded and probably drowned."

On the 28th there was more shooting, and (14th Jan.) the leader "owns to a feeling of savage delight at having a shine with these wretched savages who, without provocation, hung upon our footsteps. The two foremost men fell," the others fled, but "the advantage was not followed up." On the 1st March more natives were seen, and "the travellers immediately unslung their carbines;" most of the poor creatures fled, but three of them frantically called out in tones which Eulah recognised as English. Mr. Jardine, at Port Albany, had taught the names of his sons; and his pupils had marched twenty miles to conduct them. But for Eulah the guides might have been shot. There was much regret at the loss of about 50 cattle out of the 250 (from a poison-weed); but the deaths of the natives were recorded with some pride in a journal printed at Brisbane in 1867.

Telegraphic communication with Europe was the dream of a few long before it became the possession of the many in Australia. It was supposed that over her pastoral lands, extending to the Gulf of Carpentaria, Queensland would assume priority in the work. To Java, and thence to Singapore, the submarine line could be easily laid. Companies were, in fact, formed in England, when the spirit of Mr. Todd (Superintendent of Telegraphs in South Australia) infused itself into others; the government threw itself warmly into the cause; a bill was introduced into the local Parliament; a change of ministry exercised no repelling influence; the work was begun under Mr.

Todd's direction in 1870, and every heart in the colony beat high with the proud confidence that soon the thoughts of South Australians would flash along a line two thousand miles in length, constructed by a population in which all the men and boys were less than 90,000. Port Darwin was to be the northern terminus, and thither a British Australian Company would bring a submarine cable.

The energetic Todd set his people to work at the north as well as at the south. There was no timber for posts in parts of the line, and iron supports were procured by sea. We are told that the abandonment of a contract in the north was "a heavy blow and sore discouragement"[11] to the colony. Well-sinking in one place, floods-arresting work at another, agitated the colonial mind. The colonists grieved at defective sympathy from their neighbours, but did not flinch from their task. Mr. Todd rushed to the rescue. Beasts of draught had died in dragging loads from Port Darwin; and, to shorten the journey, cargoes were landed at the Roper river, in the Gulf of Carpentaria. But even Mr. Todd's toil could not avert the catastrophe of failure to open the line on the promised day—1st January, 1872. A message by sea told England in August 1871 that the land line was not nearly completed, and South Australia was sad.

While labouring in the north Mr. Todd was threatened with a new grief. The Cable Company spoke of enforcing penalties against the colony for its unreadiness. At their wits' end for a reply, the colonists saw the knot of their new difficulty cut for them by the breaking of the sea-cable. Over a space between the Daly Waters and Tennant's Creek, Todd established a pony express; and link by link the gap was reduced until, standing appropriately at Central Mount Stuart, he saw his work completed (22nd Aug. 1872) and the current which is ever throbbing through the veins of the world as light is poured from the sun, was for the first time lent to man in spanning the broad continent of Australia. Mr. Todd was the hero of the hour. The Governor, Sir J. Fergusson, presided at a banquet of

[11] "South Australia: Its History, Resources, and Productions." 1876. W. Harcus. Published by authority.

congratulation. The Chief Secretary of the time, Todd, and others, were decorated with honours.

A similar banquet was held in London (Nov. 1872). The Secretary for the Colonies, Lord Kimberley, presided. Telegrams, fresh from the ends of the world, were read. Chairmen of Telegraphic Companies joined in jubilee. Lord Kimberley proposed "the Integrity of the British Empire" as a toast.

Mr. Knatchbull-Hugessen (Under-Secretary) who had consistently advocated Imperial unity, struck so sympathetic a chord that Mr. Strangways declared that in future he believed that "no man, either in or out of Parliament," would dare to "advocate the disintegration of the Empire." The new use of the old currents of the material globe seemed to have thrilled the hearts of the short-lived creatures who walk about and scratch the surface of its crust. Having glanced at their happiness, we may recur to the western explorers.

The first passage was made from West to East near the Australian Bight by the brothers Forrest in 1870. Mr. John Forrest had in 1869 led an expedition from Western Australia to search for traces of Leichhardt. With his younger brother Alexander, he was sent to find a route inland of the track of Eyre along the southern coast, and to the surprise of the denizens of South Australia, the hardy brothers in a few months reached Eucla. They found in places better pastoral country than Eyre had seen, but want of water imperilled the lives of their party, and extinguished all hope that profitable territory existed near their track. In 1871 the brothers discovered pastoral lands to the east of Perth.

In 1872 a rival explorer, Ernest Giles, appeared on the South Australian side of the dreaded desert. Travelling from Chambers' Pillar on the telegraph line to the Tropic of Capricorn, he crossed and recrossed the barren sand-hills, seeing little vegetable growths but spinifex, mulga, and mallee scrub. Turning southwards he met an enormous marsh or evaporated lake (Amadeus) of treacherous blue mud encrusted with salt. The expense of the expedition was borne by subscriptions raised in Victoria. Only horses were used by Giles and his two companions. Again he

tried to probe the desert with three companions and twenty-four horses. He kept to the south of the mud expanse of Lake Amadeus. Rain fell, but did not abide upon the surface of the thirsty sand-hills. Some pleasing land was seen near the western extremity of Lake Amadeus, and explorations to and fro were made until one of the party, Gibson, was lost. After a vain search and delay Giles effected a retreat to the telegraph line, which he reached at Charlotte Waters in July 1874.

Another expedition commanded by Mr. W. C. Gosse, surveyor, strove with equal perseverance but without success, to cross the repulsive track near the mud-lake. He had a cart and camels—the water-carrying ships of the desert where two or three hundred miles were to be traversed without finding water.

Yet another expedition, fitted out by the public spirit of Mr. T. Elder, and Captain Hughes of Adelaide, sought and found a path over the barren waste. Colonel Warburton, whose previous labours near Lake Eyre have been mentioned, was about sixty years old when he essayed to solve the problem as to the nature of the interior which separated South Australia[12] from the Western sea. Leaving Adelaide in 1872, he was unable to depart on his perilous journey until April, 1873. He had, in his party, his own son, and a native named Charlie. He had camels. As the spinifex wastes afforded neither food nor water, the camels pined, and their sinewy remains were eaten by the starving travellers. An extract from a speech made by Colonel Warburton may tell the tale.

"He was an old man, and although he could do well when he had plenty to eat and drink, he did not find himself so comfortable without either, and so was the first to give in . . . his son and himself had to travel 160 miles after the blacks to ascertain where they, of whose hunting they had heard, managed to procure water, for they concluded that hunting could not be kept up under such a sun if they had no water. In that way they discovered water—he could not say by accident—because it was due to the sharp sight and quick intelligence of his friend who was at hand—to Charley. Charley, as he was riding along on a camel, perceiving a few diamond sparrows rising from a spot near their track, dropped from the camel, saying, 'I think there is water here.' (There was.) When he could not hold up his head, so weak was he, Charley had often given to him the fruits of his skill in the shape of a lizard or a rat or something of

[12] The boundary between the colonies of South and Western Australia is the 129th degree of East Longitude.

that kind. To Charley he might say, under Divine Providence, their lives were due . . . there was no doubt that if it had not been for Charley they must have perished. He had not, as was stated in the newspapers, 'stumbled upon water.' He had left their camp in the morning, and in the evening they had wondered where he was, as he had not turned up. He felt on the one hand that it would be a most cruel thing to leave him behind to perish, and on the other hand he had the lives of five men in the party depending on his pushing on. The camp was to have been broken up at six in the evening; so, in the difficulty, he took the middle course and waited until nine before moving off. When they had travelled about two hours, or two hours and a-half, with the camel-bells sounding, they heard a cooey and answered it, and striking out in the direction of the sound, found Charley . . . He had gone a distance of fourteen miles, following native tracks. He had come on a tribe of blacks and found water, and was kindly treated by them; and, when met, was on his way back. He wished it to be understood that Charley did not come on the water by accident, but hunted it up honestly and fairly. They made a fresh start from this place, and looked death close in the face, but by God's Providence they had at last got through. If they had not met Charley he did not think they could possibly have been saved. When he came to the Oakover he was so ill that he would have been glad had his companions left him alone to die; but they would not hear of it—with better sense than he had in the matter—and he was strapped upon a camel and carried in that way to the creek that led them to the Oakover."

The gallant explorer paid a graceful tribute to the succour afforded by residents on the De Grey river, who, on learning the facts (from two men sent forward by the almost dead Warburton) sent food, and horses to bring in the sufferers. As a proof of endurance, courage, and fidelity, the expedition was famous; but it confirmed the evil reputation of the land. Driven back in more than one trial to penetrate westward, Warburton trended to the north-west, touching at one point the country seen by A. C. Gregory (in 1856) at the 20th deg. S.L. Thence, by efforts surpassing his own natural strength, and by destruction of his patient camels, the courage of himself and his faithful companions found a way to the neighbourhood in which hospitable settlers, Messrs. Grant, Harper, and Anderson, of the De Grey river, were prompt to relieve him. The government of Western Australia sent a vessel to bring the wayworn party to Perth, welcomed them as heroes, and sent them to Adelaide, where, one year after they had dived into the desert, they were entertained at a banquet at which the Governor (Sir A. Musgrave) proposed Col. Warburton's health, in response to which the explorer spoke the words quoted above—pointing, amid cheers, to Charley, who stood near.[13]

[13] *South Australian Register.* April 1874.

The desert had no terrors for the men of the West, among whom Mr. John Forrest was notable. In 1872 he had proposed to lead an expedition from the sources of the Murchison to the South Australian telegraph line (then incomplete). Mr. Weld, the Governor, approved; the Legislative Council voted £400; and the expedition was delayed only by a desire to profit by the results of the explorations of Giles, Gosse, and Warburton from South Australia. Forrest (Deputy Surveyor-General) started in March 1874, with his brother Alexander as assistant, James Sweeney (farrier), a policeman named James Kennedy, and two natives, Tommy Windich and Tommy Pierre. He had asked for no more men. He took twenty horses. He was to seek good pasturage. The Surveyor-General hinted also in instructions to Forrest, that the "head of the Murchison lies in a district which may prove another land of Ophir." Forrest started from Champion Bay in April 1874. He saw good pasture on tributaries to the Murchison, but was amidst the spinifex in May. On 29th May he wrote: "Spinifex in every direction, and the country very miserable and unpromising." Yet with T. Windich he found a spring there. The horses became jaded in June, and unfortunately, while Alexander Forrest and Windich were absent, the main party were required to fire upon the natives in self-defence. Forrest feared that one of them had received a "severe wound, as we could follow the blood-drops for a long way over the stones." Forrest, attributing the collision to malice, truly said: "They will have cause to remember the time they made their murderous attack upon us." In July, we read (when Forrest and Windich were separate from the main party):

"Spinifex everywhere; it is a most fearful country. . . . We can only crawl along, having to walk and lead the horses, or at least drag them. . . . To go forward looks very unpromising, and to retreat we have quite seventy miles with scarcely any water and no feed at all. . . . It is very discouraging to have to retreat, as Mr. Gosse's furthest point west is only 200 miles from us. We finished all our rations this morning, and have been hunting for game ever since twelve o'clock, and managed to get a wurrung and an opossum, the only living creatures seen, and which Windich was fortunate to capture.

On the 7th July, Alexander Forrest and Windich found water "sufficient to last two or three weeks." On the

12th, A. Forrest and Pierre found other springs and saw many natives. On the 13th Windich shot an emu. On the 18th, when within 100 miles of Gosse's westerly point, Forrest and Windich "found a fine pool in a sandy bed, enough to last a month." Thus meandering over the sand-hills, the expedition toiled until, approaching the region which had driven back Giles and Gosse, Forrest reduced the daily allowance of food. On the 8th, Windich showed horse-tracks "coming from the westward." Whether they were left by the expedition of Giles or of Gosse, Forrest was out of danger, for Windich and Pierre could follow the traces. On the 13th, after waiting four hours at a rock-hole full of water, Windich shot one of two emus going thither to drink. On the 16th "Windich found a gum-tree marked 'E. Giles, Oct. 7, 73.'" On the same day the track of Gosse's cart-wheels was seen. On the 17th Windich shot three kangaroos, and if the horses had not been emaciated the troubles of the party might have been deemed at an end. But in that arid region it seemed that no rain had fallen since the visit of Gosse a year before. This was shown by the wheel-tracks. Only rare springs afforded water.

On the 4th September, when pushing on to reach a spring, shown in Gosse's map of the Musgrave Ranges, Windich went forward, on "the only horse strong enough, to scour some valleys." In default of water the restless horses would not eat on the night of the 3rd. A strict watch was kept lest they should stray, and an early start was made. Thirty-one miles away Windich found an abundant spring. "We are now in perfect safety, and I will give the horses two days' rest," wrote the thankful leader. The privations of the little band were ended. What remained would have been severe to less hardy persons, but to them was trivial. Following the course of the Marryatt, and striking the Alberga river, whose sandy bed supplied water to those who dug for it, Forrest reached the telegraph line (27th Sept.), and loud ringing cheers broke from the mouths of his companions. On the 30th he was at the Peake station, and exchanged joyful messages with the Governor of South Australia and others. There he learned that the explorer Giles had returned, and that

another expedition under Mr. Ross, fitted out by the munificent Mr. Elder, of Adelaide, with camels, to seek for Colonel Warburton or force a way to Western Australia, had been baffled, and returned from those spinifex wastes in which it had been Forrest's fortune to find in scanty pools the means of prolonging life and struggling to success. With Giles, Forrest came to the conclusion that on camels alone could dependence be placed. The horse requires water regularly in dry weather. The camel "has in Australia been known to go twelve and fourteen days without water, carrying 300 and sometimes 400 lbs. weight."[14] Thus, across the Western Australian wastes, Eyre in 1840 on the coast, Forrest in 1870, Warburton in 1873 not far from the 20th parallel of south latitude, and Forrest in 1874 near the 26th parallel, had forced their way; and the land was found barren. Grassy patches had been seen, but they were so distant and isolated that any general occupation of the country seemed impossible.

But the spirit of enterprise was unsated. Mr. Elder equipped a party, headed by Giles, and provided with camels, in 1875. In May Giles started from the settled districts, intending to make Youldeh, lat. S. 30° 24′, long. 131° 46′ E., the point of departure. On the 27th July Youldeh was left. Messrs. Tietkens and Young, two of Giles' assistants, explored from Ouldabinna northwards beyond the 28th parallel of south latitude, and westward along the 29th parallel nearly to the 130th degree of E. longitude. Ouldabinna itself was in lat. 29° 7′ 4″, long. 131° 15′ 4″. Giles went westward, while Tietkens and Young were at the north. Giles found a dam made by the natives 156 miles to the west of Ouldabinna, near the boundary-line between the two colonies. After these preliminary excursions the whole party left Ouldabinna (24th Aug.), carrying water in every vessel, and steering through the repulsive track which separated them from the dam found, and called the Boundary Dam by Giles. Spinifex, sand-hills and wastes, salt lakes and marshes, mulga, mallee, and occasional casuarina, sandal wood, and quandong trees were on the track, but no fresh water. Rain

[14] "Journal of the Royal Geographical Society," vol. xlv. 1875.

fell, and Giles hoped that the dam might be found replenished. It was so. There were vetches for the camels, which browsed with avidity also on the luxuriant desert pea,[15] when the Boundary Dam was reached (3rd Sept.) in lat. 29° 19′ 4″, long. 128° 38′ 16″. A week was spent in refreshment for man and beast before Giles, hardly anticipating that water would be found on the way, decided to dash forward to Perth—"haphazard at any risk, and trust to Providence or chance for an occasional supply of water here and there in the intermediate distance." He had seen nothing of the owners of the dam, and "never before saw any part of Australia so devoid of animal life." Through scrubs, past salt lagoons, the water-carrying party moved for days. Then grassy plains succeeded the spinifex horrors. On the eleventh day the spinifex reappeared. The Boundary Dam was 200 miles behind. No man knew what was before. No sign of man or of ground game was seen. At 242 miles from the dam Giles decided to give his "lion-hearted camels" one day's rest, and to apportion among them the "water that some of them had carried for the purpose." Some of his companions grudged the patient beasts their share, and wished to slay the weakest, and save the water. But Giles, "declining all counsel, declared that it should be a case of all sink or all swim." Four gallons were stowed within instead of without each camel. There were eighteen grown beasts and one foal. This was on the thirteenth day of the march from the dam. More scrubs were traversed, and on the sixteenth day traces of natives were seen. Giles' black boy, Tommy, had also found some eggs of the lowan[16] which were welcome. The camels had sometimes no food. They could gulp down the native poplar, which Giles thought "the most disgusting vegetable" he ever put into his mouth: but spinifex they could not away with.

On the night of the 25th September, 323 miles had been traversed. Mr. Tietkens in the morning judged from the depressed landscape in front that water was near. Giles was incredulous. Tietkens put Tommy, the black boy, on

[15] *Clianthus Dampieri.* Sometimes called Sturt's Desert Pea.
[16] *Leipoa ocellata.*

his own camel, the best in the troop, and sent him to spy for tracks of natives, or other hopeful signs, to the left of the day's course. The caravan moved on. Tommy, following the track of an emu, saw from a sand-hill an open tract of grass with a cluster of pine-trees in its hollow. Thither he sped and found the emu tracks tending towards it. In the hollow was a little lake of pure water. He watered his camel and hastened after the caravan, yelling the word "Water." Men heard him and told Giles, who, distrusting them, "kept the party still going on." But Tommy pursued, and "between a scream and a howl yelled out, now quite loud enough for me to hear, 'water, water, water!'"[17] The caravan wheeled round. The camels "drank as only thirsty camels can." The travellers washed for the first time for seventeen days. Twelve days they rested to recruit at the pool, 150 yards in circumference, only two or three feet deep, but fed by percolation from surrounding sand-hills. The thankful Giles reflected that the discovery was perhaps the "salvation of the whole party," and dedicated the lake by calling it "Queen Victoria Spring."

If Tietkens had not sent Tommy to spy, if Tommy had not spied, the treasure would have been ignorantly passed by, screened by a sand-hill, though distant only half a mile from the caravan. Mr. Young planted seeds of vegetables and trees at the camp, in lat. 30° 25′ 30″, long. 123° 21′ 13″. From the Boundary Dam Giles had travelled 325 miles without water. He was now only 300 miles from Mount Churchman, which was known to Giles, and near the settled districts to the north-east of Perth. His course thither was near the 30th parallel S. lat. Between Queen Victoria Spring and Mount Churchman the land was scrubby, but water was found occasionally, natives were seen, and the eggs of the lowan were obtained. In one day forty-five enriched the wanderers' larder.

On the 6th November Giles was at Inderu, the hospitable homestead of Mr. Clarke, and thence was invited by Mr. Lefroy to recruit his party at a neighbouring station. At New Norcia the Benedictine Missionaries were equally

[17] "Journal of Royal Geographical Society," vol. xlvi. 1876. Narrative of Giles.

kind, and there an electric telegraph carried messages of congratulation to Giles. His achievement was remarkable, but he was constrained to admit that though he had "travelled 2500 miles, unfortunately no areas of country available for settlement were found." He was not yet satisfied, and resolved to return overland by a new path. Forrest had crossed from the sources of the Murchison to the South Australian telegraph line by keeping near the 26th parallel of S. latitude. Giles kept near the 24th. The latter had camels. Forrest had none. Although 220 miles were traversed in ten days without seeing fresh water, the camels carried the expedition safely to the point attained by Giles with horses in 1874, when travelling from the east. From thence, for Giles aided by camels, the journey was easy, and on the 23rd August 1876 he was at the Peake telegraph station. Thus (irrespectively of the courses of Eyre and Forrest curving round the shores of the Australian Bight) in four separate tracks, Warburton, Forrest, and Giles had proved the barrenness of the land between the 20th and 30th degrees of south latitude. The grim defiance of the desert could only be overcome by toil. It may not be unworthy of notice that Eyre in 1843, Strzelecki in 1846, Sturt and Leichhardt in 1847, Augustus Gregory in 1857, Stuart in 1861, Burke's representatives in 1862, Frank Gregory in 1863, Warburton in 1874, John Forrest in 1876, were awarded medals by the Royal Geographical Society, and that in annual addresses the Presidents of the Society did them honour. Giles received honour from the *Societa Geografica Italiana*.[18]

To complete the record of exploration in Western Australia it may be mentioned that Alexander Forrest found in the space between the 15th and 20th degrees of south latitude room to display the endurance of a brother (Matthew), and other comrades, amongst whom were two natives. From Beagle Bay he travelled eastward, and saw at the Fitz Roy river a territory adapted for pastoral purposes. Striving to reach the Glenelg river he was rebuffed by the rough ranges described by Grey in 1838,

[18] Its distinguished President, Christofero Negri, in his address in 1870, hoped for the time when "nel numero dei soci raggiungerebbe l'Inglesi. Cosi potessimo sperare di raggiungerne anche la fama!"

though he saw far off the Stephen Range named by Grey. Returning to the Fitz Roy, after losing ten horses, Forrest explored the unknown land to the east. He saw grassy country on his way to the boundary of the colony, and on the Victoria river, but was compelled to kill and eat some of his horses. Sickness attacked some of his people, and with the two best horses he rode with one companion to the friendly South Australian telegraph line for help. Obtaining food and fresh horses he relieved his friends, returned with them to the telegraph line at Katherine Station, and thence led them to Port Darwin, whence he sailed to Sydney. It was estimated that he had seen 5,000,000 acres of pastoral lands on the Fitz Roy river watershed, and 20,000,000 elsewhere. He reported—"Large numbers of natives were seen, but in no single case had we any trouble with them." When rebuffed by the rugged rocks which arrested his progress northwards near Collier Bay, he wrote that he had "worked hard—more so than I have ever done in my life—to bring this expedition to a success, but owing to the rough hills over which I could possibly have no control, as my horses would not at last face them, and as will be seen ten of them were lost, we tried hard to get north without success."[19] Thus the "barren sandstone rocks and hills" which Grey and Lushington described as "utterly inaccessible" to their ponies in 1838, were found equally impassable by Forrest in 1879. More fortunate than his predecessor, he had no fatal encounter with the natives. Both Grey and Forrest reported that the natives were a fine-looking race, and it was in their domain that the remarkable carvings and paintings on the rocks were seen by the former. Pierre, one of the natives who accompanied Forrest, was very useful at first, but became ill, and was "strapped on to his horse to keep him from falling off." He only lived long enough to reach King George's Sound, and to be buried in his own country.

The chapter of Australian discovery being virtually closed, a few words may be said of the native tribes. The position they held in the mother-colony may be estimated

[19] Report to Sir H. Ord, Governor of Western Australia.

by the fact that, in 1876, there was promulgated from the government printing office in Sydney,[20] with a view to magnify the colony at the New York Centennial Exhibition, an essay in which no word was found concerning the dispossessed heirs of the soil. There was no record of duty, recognized or respected, towards the disinherited. Climate, mineral treasures, and resources were extolled as though they had been invented and not conferred. Political, moral, social, and intellectual advancement were claimed as marvellous results within the short period which had elapsed after "the axe of the pioneer" was imported to "clear the way for the flowers of the mind."[21] It may have been thought prudent to be silent on a subject on which praise was impossible; or silence may have been caused by sympathy with the general neglect. The mother-colony had been hard and unjust in her dealings; and though Victoria might well have done more for the good of the aborigines, her conduct was, for many years, bright when contrasted with that of New South Wales. The government in Sydney long abandoned any attempt to do its duty. A few blankets contemptuously distributed once a year were flimsy tokens of disregard. No functionaries were appointed to watch over the withering remnants of tribes. Private benefactors strove to make amends for public neglect. The Rev. W. Ridley laboured amongst the Kamilaroi. Mr. Daniel Matthews established a shelter-station at Maloga near the Murray river, to which, in 1879, the government doled out £200;[22] and a Congregational minister, the Rev. J. B. Gribble, shocked at the condition of the blacks, resigned his ministerial charge to form a mission station on the Murrumbidgee, for which he made appeals by lectures in Sydney and its suburbs. And this was all that was done at that time for the supplanted tribes by a community whose revenue in 1878 was £4,983,864. The tone of the public mind on the subject

[20] "New South Wales, the Mother Colony of the Australias." By G. H. Reid. Sydney: 1876.

[21] *Ib.* p. 101.

[22] "The Statistical Register of New South Wales, 1879," shows that from voluntary contributions, &c., in that year, Mr. Matthews obtained a larger sum than the Treasury gave him: £360 shamed the government grant of £200.

may be illustrated by an occurrence which proves in a melancholy manner that it was not only to the convict element that former atrocities were due. The criminal was Victorian, but the jury who tried him were men of New South Wales. On 22nd June 1876 there was a race-meeting at Wilcannia, on the Darling river in New South Wales. In the evening a man named Giles, known as a "bookmaker on the turf," walked down to a camp of a few natives and assaulted grossly a native woman. Her husband, without absolutely striking him, pushed him away and protected his wife. Giles returned to a publichouse, and swore that he would shoot the black-fellow. The publican, alarmed, reported the threat to a constable. The constable advised Giles to retire to his hotel. Giles seemed excited, but sober. "He promised to go to his hotel." The constable searched for a pistol, but found none on Giles' person, and allowed him to retire to his hotel, a different one from that at which he had used his threats. In half-an-hour the constable heard three reports of shots in the "direction of the blacks' camp." He ran thither, met Giles on the way, asked what was the matter, and was answered—"I have just shot the black-fellow." After a struggle the constable wrested a revolver from the hand of Giles. Releasing the culprit, the constable went to the camp and was shown the wounded man. Obtaining assistance, he arrested Giles for shooting with intent to kill. On the 23rd, a Wilcannia magistrate remanded the prisoner for eight days, but admitted him to bail. On the 1st July Giles was committed for "shooting with intent to kill." Again bail was taken—£300 surety from Giles himself, and £200 each from two other persons. He was to appear at the Assizes at Deniliquin in October. But though committed, not for murder, but for a minor offence, he had qualms lest a Judge of the Supreme Court might think his act a serious matter, and he absconded. He was arrested at Adelaide, and was tried before Sir W. Manning (21st Oct. 1876) at Deniliquin.[23] The recognizances for his stipulated surrender were not estreated. One Sims had accompanied Giles when the murder was committed, and he

[23] The author has perused the Judge's notes of the trial.

appeared as a witness. The publican who acquainted the policeman with the threat of Giles had been schooled in the meantime, and remembered only that "some one" at his house said he would "shoot a blackfellow." He could "not say whether he told the constable that the prisoner said it." The constable, however, could and did say the truth. Neither the wife of the murdered man nor the other natives who saw the murder could, under the colonial law, be accepted as witnesses. Sims, in a confused but bold manner, swore that he endeavoured to dissuade Giles from going to the camp with the pistol, that he followed him, he knew not why,—and that the black man assaulted Giles, who was on the ground when the shots were fired. After retiring for half-an-hour, the jury brought in a verdict of manslaughter. In reply to a question from the Judge, the foreman said they "thought it safer to believe" Sims, and to believe also that the murderer had the revolver on his person when the constable vainly searched for it, which point the prisoner's counsel had earnestly striven to prove in his favour. The Judge inflicted a sentence of three years' hard labour. Witnesses were called as to character. One swore that Giles was always very steady; another that he had frequently seen him drunk, and that in that state he was a "madman." Witnesses were ready to provide evidence of every kind, however incongruous, lest any should be omitted which might screen the culprit. In this manner did a New South Wales jury discharge itself of its oath to try well and truly the matter brought before it, not in an outlying district where terror might dismay, but in a long-settled territory, within which the usual causes had decimated the native race. In this manner the widow of the murdered man could hardly be persuaded that the law was framed to administer justice. She saw her husband murdered. She was asked no questions by the wise men of the colony. She saw his comrade (if not, in her thought, his accomplice in the deed) insolently giving false witness and obtaining credit.

Why are these things narrated? To arouse, if possible, a public sense that, though past wrongs cannot be blotted out, there is still a future in which some good may be done; that while one solitary Australian remains alive, a sacred

duty rests upon the community to visit the poor creature in his affliction, and atone in some degree for the cruelties which have been heaped upon his race. The community was indeed kind-hearted and generous in contributing at all times to relieve wants made known to it. But the miseries of the natives were unknown to most persons. Far in the interior, the victims of outrage and degradation fell by hundreds beyond the ken of society. It is a notable incentive to good deeds that the isolated efforts of Mr. Matthews at Maloga, and Mr. Gribble at Warengesda,[24] awakened the public conscience. These two men, with humble means and scanty subscriptions from the benevolent, turned the tide. A New South Wales Aborigines' Protection Association was formed to aid their good work. The Governor, Lord Augustus Loftus, became its patron; Sir J. Robertson its president. The Church of England Bishop, Dr. Barker, and Mr. W. J. Foster, a member of Parliament, were vice-presidents. Other members of the two Houses assisted, and Mr. E. G. W. Palmer became honorary secretary. The Association made a report in June 1881. Contributions from school-children, and widows' mites from various places, eked out the subscription list. A native, T. B., sent ten shillings from far-distant Armidale, to assist his unknown brethren at the Murrumbidgee. In 1882 there were 120 pensioners at Maloga. The government had appointed a member of the Legislative Council (G. Thornton) Protector of Aborigines, had authorized a reserve of 1000 acres of land for the pensioners at Warangesda, had granted aid for schools, and proffered £2 for £1 raised by the Association to aid the existing institutions or others which might be formed.

Mr. Thornton reported that there were still 4494 black adults and 1108 half-castes. There were 2817 children, of whom 1271 were half-castes. Ardent liquors supplied by unscrupulous persons in defiance of the law were, in his opinion, the precipitating cause of the disappearance of the race. He advocated reserves for their benefit, so that they might live of the fruit of their native land, by their own

[24] It is a pity that by an irregular combination of two words a name has been compounded for this station which includes the letter "s," which does not exist in the native language.

exertions encouraged by the government. If the kindliness of the community can be attracted to the question, there can be no doubt that amends will be made, though tardily, for the wrongs and neglect of the past. Mr. Thornton did not shrink from maintaining that throughout the whole territory the aborigines "were entitled to be equally considered and provided for."

In June 1883 the government took further steps. A Board for Protection of Aborigines was appointed. The Inspector-General of Police, Mr. Fosbery, was its chairman. Philip Gidley King, grandson of Governor King, became a member. Members of both branches of the Legislature took part in the management, and in the year 1895 the amount expended on behalf of aborigines, including half-castes (who receive the same treatment as the natives of full blood), was £17,050. Not only the amount, however, but the methods of distribution, bear witness to the humane spirit displayed. Besides direct supply of food and clothing, in which the kindly aid of the police was conspicuous, throughout the territory, about £2800 were granted in aid of the temporal needs of Mission Stations. Medical attendance and food were afforded to the sick.

The Aborigines' Protection Association still continued to labour at three Mission Stations—Cumeroogunga, Warangesda, and Brewarrina.

In their report for 1895 the governing body regretted that "the aborigines of our own land have not had extended to them any widespread manifestations of sympathy and aid." It is difficult amidst the thronging claims of social needs to press upon the charitably disposed the requirements of the scattered relics of tribes which once roamed over their native domains. The unseen is too often disregarded. But it is comforting to observe the present action of the government.

A Board, containing several members of the Legislature, administers grants of money; the aid of the ubiquitous police is kindly given; and Mission Stations failing to receive ample voluntary contributions receive assistance in maintaining the fabrics within which they conduct schools, and minister spiritually to their clients.

The waifs of the once numerous tribes which contained scores of thousands of persons are now but few in number, but their lot is alleviated by humane care for their physical and spiritual need. The naked are clothed and the sick are visited.

Their numbers were returned in 1895 as 3360 of full blood, and 3386 half-castes.

If there be any pre-eminence in evil, Queensland must bear the stigma of deserving it; and some of her people were not ashamed to abet the foul deeds perpetrated within her borders.[25] The formation of a body of native police in the district, which was (under the name of Queensland) to be severed from New South Wales and created a separate colony, has been mentioned. The habits of the natives, the nature of the service, and the character of some of the officers, contributed to make the corps a mere machine for murder. It fell under the control of the new government of Queensland in the end of 1859. A sailor named James Morrill, shipwrecked near Port Denison, in 1846, remained with the natives on the coast until 1863. His testimony was, that "from 1850 to 1860, before the whites commenced destroying the blacks indiscriminately, the northern tribes were very well disposed towards the whites."

When this, with other concurrent evidence, was cited in a lecture[26] in Melbourne, in 1865, indignant denials were

[25] Two indignant partners in a station published (with their names) in a Brisbane newspaper a remonstrance addressed to "the officer in command of the party of native police who shot and wounded some blacks on the station of Manumbar on Sunday, the 10th February 1860." Four or five old men had been shot and left "unburied within a mile or two of our head station. . . . You have wounded two of our station blacks who have been in our employment during lambing, washing, and shearing, and all other busy times for the last eight or nine years, and we have never known either of them to be charged with a crime of any kind. . . . Being in our employment, they very naturally look to us for protection from such outrages, and we are of opinion that when you shoot and wound blacks in such an indiscriminate manner you exceed your commission, and we publish this that those who employ and pay you may have some knowledge of the way in which you perform your services."—Manumbar, 22nd February 1860. T. and A. Mortimer.

[26] "The Aborigines of Australia." By Gideon S. Lang. Melbourne: 1865.

made in Queensland. One gentleman who doubtless, as a legislator on the subject in 1856-7, had no cruel motive in enlarging the force, warmly denied that the corps was "intended to be an aggressive force." He thought the lecturer was not a man who would utter so foul a slander as that the whites were always the aggressors, and bent on exterminating the blacks. The converse of the charge "would be more nearly the truth." The ink of his indignation was not dry when Queensland newspapers contained these phrases:

"Are the blacks to be dealt with as human beings, ignorant, brutal, and degraded, but human still? Or are they to be treated as wild beasts? (*Maryborough Chronicle*, August 1865.) "If some commit an outrage the whole are considered guilty, under the principle, that though they all did not actually participate in the crime, yet they were as fully capable of it as the actual offenders. The difficulty of detecting the real criminals is obviated by a punishment of the whole . . . they are regarded as worthy of nothing but slaughter." (*Brisbane Courier*, 7th August.) "There is already too much indiscriminate shooting of the blacks, and while the practice is continued outrages may be expected in retaliation." (*Rockhampton Bulletin*, 8th August.)

In the same month, at a public meeting in Rockhampton, a resolution was carried, declaring that it ought to be made legal for any owner or manager of a station, with consent of one magistrate, to organize a force to disperse natives who might threaten or commit outrage, "and that no one engaged in such dispersion shall be liable to any legal penalty." Circumstances made such a resolution almost needless. When in New South Wales the murderer of one of the remnant of a shattered and peaceful tribe could be acquitted in 1876, though legal evidence was available to prove the crime, what chance was there that, when no victim's voice could be heard, and no living witnesses remained but the murderers themselves, the arm of the law would be raised to do justice? Culprits might, and did, boast among their friends of the numbers of blacks shot in a raid. But even if those friends recoiled in horror, it was impossible to punish a crime of which only such hearsay and retractile evidence existed. Known of all, but judged of none, murders continued. Some persons, more humane than others, scarcely dared to think of what was done. Others openly said that the sooner the strife was over the better. Let the tribes be swept from the earth! There

was a sub-inspector of police, of whom it was rumoured that he had coarsely vowed that no black fellow should escape whom he could kill. In 1876 he was committed for wilful murder of an aboriginal boy named Jemmy. Handcuffed, fettered, dragged, and kicked by the sub-inspector (Wheeler), with his hands secured to a rafter high over his head in the veranda of the police barracks at Belyando, the naked Jemmy was flogged till the whip broke, and then with a leather saddle-girth, on the 11th March. A kindly person, who called himself "a general station hand," Frank Hamilton, found the boy on the 12th, lying near a lagoon and covered with a blanket. His body was covered with wounds, which "ran into each other." Hamilton tried to persuade the poor creature that he would recover, but was answered in broken English: "No. I shall die. Here" (pointing to his stomach) "I am altogether broken." So he was; by the heavy boot of the sub-inspector. He died four days afterwards in spite of the humanity of Hamilton, who, when other black boys had at night carried the sufferer to the veranda of a hut, tried to relieve him. When the boy died Hamilton informed his employer. An inquisition was held, and the sub-inspector was committed for trial for wilful murder. But there are dark ways of shielding those who have offended in the light. The prisoner was committed at Clermont on the 10th April for trial at assizes to be held at Rockhampton in October. Bail was afterwards allowed by an order of Mr. Justice Lutwyche. The amount of the security nominally taken by the Supreme Court Judge was £800 from Wheeler, and £400 from each of two sureties. But with a long interval between the commitment and the date of trial, the consequence of taking bail could be easily foretold. When the case was called, in October, the criminal "did not answer to his bail, which was forfeited." Such was the record in the newspaper of the day; and it is confirmed by official records, which add that Wheeler "has not since appeared."[27]

[27] In the London *Times* (May 1883) Sir C. Lilley, Chief Justice of Queensland, stated that "ample provision exists for the administration of justice to all races in Queensland by independent Judges," who judicially (under a Statute enacted "five or six years ago) received testimony of heathen and native witnesses, and submitted it to juries in cases even where

The abuse of the native police did not begin under the Queensland government. It was rife before that settlement was separated from New South Wales in 1859. When tidings of the discovery of gold at Port Curtis drew crowds from Victoria, an intelligent observer went with them, as special correspondent of a Melbourne newspaper in 1858. He reported that he was

"unfortunately safe in saying that the ordinary relation between the black and white races is that of war to the knife. The atrocities on both sides are perfectly horrible, and I do not believe the government makes any effort to stop the slaughter of the aborigines. A native police force is indeed actively engaged, but exclusively against the blacks, who are shot down by their bloodthirsty brethren at every opportunity. I believe the blacks retaliate whenever they can, and never lose a chance of murdering white man, woman, or child. . . . The number of blacks killed it is impossible to estimate. They are being killed officially by police, and unofficially by settlers and diggers every day, nor are women and children by any means spared when murders are being revenged by the whites.[28] . . . I believe the border warfare about the Fitz Roy, the Dawson, and the adjacent districts to be as savage to this day as any war with the aborigines that in any part of Australia ever darkened with disgraceful incidents the history of our progress."

Though only two Governors, Phillip and Gipps, had dared to be just, in the long line of responsible Governors, many of them had been kind and well-meaning. Supported by the humane counsels of Secretaries of State, and by the provision for the aborigines secured by Lord Stanley under his Land Act of 1842, Governors had tempered, if they could not quell, the blasts of persecution which raged over the land. But on the disappearance of the Governor's active control, there arose a confidence that the Executive

prisoners were charged with capital offences." The Act alluded to may be presumed to be 40 Vict. No. 10, which, because great difficulties had been found to arise by "reason of many persons being incompetent to be sworn, or being ignorant of the nature of an oath," enabled the presiding Judge or magistrate to accept a declaration "if satisfied that the taking of an oath would have no binding effect." . . . Such a clause might be useful with regard to the Polynesian labourers in Queensland, but is obviously inapplicable in cases of shooting and dispersion of Australians. If Sir C. Lilley could have adduced one case in which a slaughterer and disperser had been brought to justice, the fact would have been of importance. In the case cited in the text it was the intervention of a Judge of the Supreme Court that enabled the prisoner to flee from trial, and the author received official proof of the fact. Sir C. Lilley's letter to the *Times* was, therefore, misleading.

[28] "An Account of the Rush to Port Curtis." By Frederick Sinnett. Geelong: 1859.

government, dependent on the people's voice, would not dare, if it should desire, to be just. Dwellers in outlying districts denounced as impertinent any questionings as to the number, or the manner, of the violent deaths of natives on their cattle-stations. The responsible ministries of Donaldson, Parker, and Cowper, which existed between 1856 and 1860, did nothing to ameliorate the condition of affairs in the northern districts. To compile a catalogue of the atrocities perpetrated would require volumes. The melancholy fact that those who are ignorant, or wilfully blind, contradict the truth, or deprecate discussion of it in the hope that it, like the blacks, may die out of the land, renders it necessary to state a few particulars. The gallant conduct of the *Queenslander*, a well-managed newspaper in Brisbane, supplied some proofs.

"We are determined (the editor wrote 29th May 1880) that the public shall understand what they are doing; and that if no attempt is made at reform, the refusal shall come from people who thoroughly comprehend their responsibility. As far as we are able, we shall tear away the veil with which those who know what our system is have hitherto kept it covered, and remove the ignorance in which a considerable portion of the public have been content to remain."

"This, in plain language (1st May 1880), is how we deal with the aborigines. On occupying new territory they are treated in exactly the same way as the wild beasts or birds the settlers may find there. . . . Their goods are taken, their children forcibly stolen, their women carried away entirely at the caprice of the white men. The least show of resistance is answered by a rifle bullet; in fact, the first introduction between blacks and whites is often marked by the unprovoked murder of some of the former—in order to make a commencement of the work of civilizing them. Little difference is made between the treatment of blacks at first disposed to be friendly and those who from the very outset assume a hostile attitude.[29] As a rule the blacks have been friendly at first, and the longer they have endured provocation without retaliation the worse they have fared, for the more ferocious savages have inspired some fear, and have therefore been comparatively unmolested. In regard to these cowardly outrages, the majority of settlers have been apparently influenced by the same sort of feeling as that which guides men in their treatment of the brute creation. Many, perhaps the majority, have stood aside in silent disgust . . . . and a few have always protested in the name of humanity against such treatment of human beings, however degraded. But the protests of the minority have been disregarded by the people of the settled districts; the majority of the outsiders have been either apathetic or inclined to shield their companions, and the white brutes who fancied the amusement have murdered, ravished, and robbed the blacks without let or hindrance. Not only have they been unchecked, but the government of the

[29] One tribe quickly heard from another the progress of "civilization;" and was aware, before actual contact, of its nature.

colony has been always at hand to save them from the consequences of their crime. . . . It is enough to say that the native police, organized and paid by us, is sent to do work which its officers are forbidden to report in detail, and that a true record of its proceedings would shame us before our countrymen in every part of the British Empire. . . . When the blacks, stung to retaliation by outrages committed on their tribe, . . . have shed white blood, or speared white men's stock, the native police have been sent to 'disperse' them. What 'disperse' means is well enough known. The word has been adopted into bush slang as a convenient euphuism for wholesale massacre."

To shame the colony into better conduct the editor, in subsequent columns entitled "Civilizing the Blacks," gave "a plain, unexaggerated statement" of actual occurrences.[30] One boy, Toby, was a "tame" black, employed on a station where one manager after a time gave place to another who scorned humane notions. Toby was believed to have played some pranks on a South Sea Island shepherd. The Kanaka (as such an islander was generically called in Queensland) complained. Toby absented himself in fear of a flogging. On his return to the blacks' camp, after some days, the superintendent saw him and told him, with apparent good nature, not to offend again. Pleased at so light a rebuke, Toby cheerfully obeyed an order to drive some horses up to the stable. The superintendent, the storekeeper, and Toby rode off on horseback, the latter

"chatting merrily. When out some distance Mr. —— quietly remarked, 'I am going to shoot you, Toby.' The black turned round smiling, thinking this was some joke, and saw Mr. —— coolly pulling out his revolver. The wretched boy, in an agony of sudden fear, crouched on his saddle, putting out his hand and shrieking, 'Don't shoot! Don't shoot!' when his master sent a bullet crashing through his brain. The two whites then returned, leading the riderless horse. This fact was much discussed in the neighbourhood of —— Downs, as it was well known. Some people approved the action as being the best way of 'putting the fear of God in the blacks,' and preventing them at any future time doing mischief; but the majority, though quite admitting the right of Mr. —— to deal as he liked with a nigger, were of opinion that it was rather a dirty transaction. The Kanaka, who was the aggrieved party, was genuinely horror-struck when he heard of the affair—but then he was only a South Sea Island savage.[31] . . . .

At another place there was a friendly tribe, "tamed" in former years, while at a distance, towards the desert

[30] The articles and correspondence arising from them were collected in a pamphlet—"The Way we Civilize; Black and White, the Native Police." Brisbane: 1880.

[31] *Queenslander*, 15th May, 1880.

country, there were natives still wild. Fired at whenever seen, they retaliated by plundering white men's huts, and would without doubt have killed their hunters if they could. But white men having firearms were not easily attacked with wooden weapons. The friendly tribe were in dread of their wild brethren, and warned the whites of their approach occasionally. The "tame" blacks frequented the station freely. The superintendent sent for a band of native police, who arrived with their sub-inspector. "A young gentleman, who was on the station acquiring colonial experience," accompanied the hunting party in what seemed "to him a legitimate act of war." A small party of natives was found. They belonged to the "tame" tribe known to the young gentleman. When the game was run down among some rocks, he recognized them, and the horsemen having dismounted,

"he cried out to the sub-inspector of police, 'Why, Mr. ——, these are our blacks.' The answer he got was an angry—'Stoop down, damn you,' —for he was in the range of the sub-inspector, who was taking deliberate aim at a wretched creature who was making frantic efforts to escape by clambering up the naked rock. . . . He was soon writhing in his death agony."

The troopers shot two others. On another occasion two partners in a station procured a neighbour's help, and found and shot, in flight or perched upon trees, no less than twenty-two blacks. They camped at a neighbouring water-hole, and in the morning

"one of the number remarked, 'We ought to see that we have made an end of those ——.' Accordingly, he went carefully over the scene. Most of the blacks were stone dead; some were groaning in their last agonies; a few who had not been mortally wounded seemed to be reviving. Mr. —— carefully finished each one of the groaning wretches who looked as if he might revive. Those that were evidently dying he left alone. And, as revolver cartridges cost money, he economically battered in their temples with one of the blacks' clubs."

A story almost too horrible to write ought not perhaps to be put before the reader, except to show the depravity which such unpunished crime may induce. A correspondent of the *Queenslander* (calling himself "Never, Never") undertook to justify the loathsome conduct just narrated.

"Really it might be from moral obtuseness, but . . . I cannot see why it was more sinful to knock them on the head than shoot them . . . if pistol cartridges were scarce, as often they are in outside country, it was a

very sensible thing to do. I should feel just as much[32] horror if I read that they were shot. . . . In publishing these hypothetical narratives, the *Queenslander* violates good taste and almost common decency. I maintain that half these yarns are fabrications, and that the rest are exaggerated."

In another letter this censor of the press, scouting a suggestion that an officer should report all proceedings of the native police, and should not permit indiscriminate killing of captives, asked:

"Having captured the offender, what are our white police to do with him? Follow the example of the South Australian Government, and have him taken, at great expense to the country, to the metropolis, confined in comfortable quarters in gaol, and at the expiration of his twelve months present him with a new suit of clothes and a tomahawk, and send him on his way rejoicing, ready for more crime? or tie him up and flog him? or give him a short and easy shrift with a pistol bullet? . . . The *Queenslander* says the officers in command should be compelled to report their operations, &c.; now what would be the result of this? For some fancied or real grievance a man would report his officer for undue severity, or some *humane* (*sic*) stationholder would do it if a favourite black boy got punished . . . cattle slaughtering and shepherd-killing would go on with impunity, because the officer in charge of the district would have the fear of the gallows before him if he used decisive measures to stop it. As for the cowardice displayed in shooting blacks as a punishment, it would be as just to call the judge, who passes sentence of death, a coward, or the members of a firing party at a military execution cowards. . . . I maintain that the blacks require shooting, and it is better to get the work done by blacks than by whites . . . anyone who has had experience knows that in many places whites are useless at black-hunting; if the writer of the article had ever tried following blacks through mangroves, he would know so too. That a better plan could be worked out than that at present in vogue, I admit, but I do not think any of us see a way as yet; the question is too knotty, and by the time it is solved the blackfellow will be a thing of the past—and a good job too. . . . Unless the *Queenslander* is able to evoke some better idea than the mere substitution of white for black troopers, it had better leave the matter to be settled in the natural way, and—the survival of the fittest."

In consideration for any reputable relations of "Never, Never," it is better that he should be unnamed, but his allegations deserve exposure. On the 8th May 1880 he thought it safe to write in a community of Englishmen:

"My experience pretty well comprises the boundaries of Queensland. . . . Furthermore, I am what would be called 'a white murderer,' for I have had to 'disperse' and assist to 'disperse' blacks on several occasions. . . . If, as the *Queenslander* says, the native police are an exterminating force, it is a pity that the work is not more thoroughly and effectually done. Is there room for both of us here? No. Then the sooner the weaker is wiped out the better, as we may save some valuable

[32] And, of course, as little—a meaning well understood by the friends of the letter-writer.

lives by the process. . . . We are all savages; look beneath the thin veneer of our civilization, and we are very identical with the blacks; but we have this one thing not in common—we, the invading race, have a principle hard to define, and harder to name; it is innate in us, and it is the restlessness of culture,[33] if I dare call it so. We work for posterity, we have a history . . . the native of Australia has a short history . . . he never seeks to improve land for those who will come after him. This justifies our presence here . . . and having once admitted it we must go the whole length, and say that the sooner we clear away the weak, useless race the better. And being a useless race, what does it matter what they suffer? . . ."

Who shall say that Swift's description of his countrymen, as a pernicious race of odious vermin suffered to crawl upon the surface of the earth, would have been hyperbolic if they were as worthy of it as the *Queenslander's* correspondent? In a foreign land his letter might even seem a veiled satire upon the system professedly extolled. But in Queensland the sincerity of the writer was known, and he was not without admirers. To such base uses may the product of modern civilization be reduced when exempt from the chastening influences of religion and of a well-ordered society. But all the colonists were not so brutal. In the newspaper which contained the foregoing sentences, another writer declared that

"any wholesale massacre of the blacks, such as is daily perpetrated, is as unjust as it is horrible in the sight of God and man. . . . I, too, have lived among blacks in a newly-settled district. . . . If it is advisable that as a colony we should indulge in wholesale murder of the race we are dispossessing, let us have the courage of our opinions, and murder openly and deliberately, calling it *murder* and not dispersal. . . . How many among us understand the euphemistic word *dispersal*? Can they know that it means this? A white man, an officer and a gentleman, at the head of some half-dozen black murderers, watches a camp of blacks all night. . . . The unsuspecting blacks wake to prepare their morning meal. Suddenly a shrill whistle, then the sharp rattle of Sniders, shriek on shriek, . . . carnage . . . hewing down men, women, and children before them. How long shall these things be?—for that they exist no dweller in outside country can deny. . . . Do those of us who have

[33] In some dark domain of his culture "Never, Never" disapproved of certain acts whose atrocity can only be surmised. In the letter above quoted, he wrote: "I am not defending the acts of individuals. I, in common with other bushmen, am regretfully compelled to admit that deeds of blood-curdling atrocity have been committed by white men, but parallel acts are to be found in the history of the subjugation of any barbarous nation, and my object in writing is to condemn the wholesale slander of the whole white race in the colony for the acts of the few." But he had never taken steps to prevent or to expose the "blood-curdling" atrocities which he professed to regret.

lived in outside districts know of no outrages committed by whites? No black boys (servants who get no wages) brutally flogged and ill-used? No young women forcibly abducted from the tribe for purposes I dare not mention here? When I think of the nameless deeds of horror that I have heard discussed openly by many a camp fire, I can scarcely control my indignation and write calmly. . . . I hope I have said enough to attract attention to the loathsome and horrible system of dealing with our blacks that we, as a colony, have hitherto sanctioned."

There were homesteads, he said, within which some of the native police officers who were most notorious were not admitted. Another correspondent, writing from the district in which the sub-inspector bruised the boy to death in 1876, said that until 1868 the native police used to visit his station constantly, and "the result was shepherds killed, sheep, cattle and other property destroyed. . . . At my request in that year "the native police promised to visit me as little as possible, and not interfere with my blacks. . . . I was able to explain to the niggers that if they kept away from the cattle-camps and did not molest the shepherds they might hunt and camp all over the run."

"(Damage to the property decreased immediately.) The blacks, since they have become friendly, tell me that in the old days of 'reprisals' carried out in the usual manner—*i.e.*, shooting the men and destroying their nets, water-bags, and implements, we used to starve numbers of the old men, women, and children to death, for, being hunted into the desert country, they had neither the means of carrying water nor of catching game, and, of course, the weaker members of the tribe felt it most. I have employed, and do employ, numbers of the aboriginals. For eight years they have done all my sheep-washing, and I always have a few working on the place."

The writer advocated the reservation for the natives of tracts of 500 square miles stocked with sheep and cattle for their support and tended by their own labour.

"Almost anything would be better than the present system, which is a disgrace to civilization. If we failed we should be no worse off than at present, and we should have at least the merit of having done our best. Unless some measures are quickly taken the aboriginal question will solve itself. Ten years ago the tribe I am best acquainted with could muster 130 fighting men; now it could not muster more than 40 at most, and few children are growing up. Measles in 1865, and the vices of civilization since, have caused this rapid decrease."[31]

One of those who doubted the accuracy of the correspondents of the *Queenslander* thought that "most of the

[31] "C." *Queenslander*, 10th July 1880.

officers would have scorned to have done the deeds attributed to them," but urged that the editor should "leave the matter to work its own end, which it will surely do." A correspondent, who observed that doubts were cast upon the statements made, described four massacres of peaceful natives by order of officers. The editor (7th Aug.), in announcing that the writer had authorized the publication of his name, added—"All things considered, we think it better to publish his initials merely."

Such is the picture of the conduct of the Queensland government and some Queensland colonists towards the native race. It is drawn by the hands of eye-witnesses and actors. The defence put forward by its apologist, "Never, Never," is not its least repulsive feature. Over what he justified a larger number of his accomplices would have thrown a veil in the hope that undefended atrocities might wither out of men's knowledge. A still larger number, resident in towns, were probably ignorant, and may not have been enlightened by the manly conduct of the *Queenslander*. The subject is not inviting. The dead or dying bodies of black brethren are passed by on the other side, while petty local claims or amusements engross attention. And yet, unless, as a people, the colonists recognize a duty in the matter, for all these things shall a reckoning be made. If the community suffer in no other manner, the demoralization engendered by their own acts must corrupt the body politic, and wring from future suffering an expiation for past crime. How deep the demoralization had become may be learned from one fact. The *Queenslander* opened its columns to the subject in May 1880. The defence of past atrocities was almost as nefarious as the atrocities themselves. Yet, when a member of the Queensland Assembly asked (21st Oct. 1880) that a Royal Commission might be appointed, and contrasted the more humane conduct of South and Western Australia with that of Queensland, he was opposed by no less a person than Mr. A. H. Palmer, the Colonial Secretary, on the ground that a Commission could "not find out anything they did not know at present," and that it would be better to increase the native police force rather than reduce it. Yet he "had never attempted (he said) to deny that many

cruelties had been perpetrated" by some officers. The general body were "honourable and amiable." One member significantly said he was "quite prepared to substantiate the statements he had made concerning the force, but could not do so until an Act of Indemnity was passed." Another thought discussion useless. "The black race have got to go . . . the appointment of a Royal Commission is unnecessary and useless." This man subsequently became a responsible minister. Another said he had "never seen a single atrocity," but before you can do anything "with the blacks you must establish a wholesome fear amongst them." Mr. Thompson averred that it was "futile to say that no atrocities had been committed." They were vouched on good authority, and the *Queenslander* deserved high praise for arousing public opinion to a "sense of duty to those whose weakness entitled them to consideration." But mercy or justice were sought in vain from those whose aim was to suppress the truth. The majority adjourned the debate. The *Queenslander* did not consider that the evasion of inquiry would shield the Legislature from eventual condemnation. Mr. Palmer had been "disingenuous to a degree which, in justice we may say, is not usual with him." Mr. Morehead's speech was

"simply the most brutal view of the relation between the colonists and the aborigines, formulated—and he supported it with vulgar insolence." "Mr. Thompson expressed the sentiment of a great many people. . . . The public have tolerated the existing state of things so long, mainly because they did not know the truth, and because they accepted the explanations by which it has been glossed over by those in favour of the continuance of the present system. . . . We do not believe that the public sentiment of the colony is so depraved as to rest content with such an evasion. . . . By all means in our power we shall attract and rivet the attention of our fellow-colonists, both here and in the rest of Australia, to the disgraceful facts we have already brought forward, and we shall continue to do so until the Legislature is prepared to effect a reform. We are glad to find from the discussions that have taken place that we shall have a good deal of powerful assistance."

If shame should urge what virtue cannot prompt, the editor of the *Queenslander*, Mr. Gresley Lukin, will deserve the credit. What would the reader suppose was the effort made in 1880 to relieve the feeble remnant of natives, in districts where it was not deemed needful to maintain an active band to slaughter them? Mr. Palmer, the Colonial

Secretary, in reply to formal inquiry, wrote[35]: "There is no aboriginal station in Queensland under government supervision. Two or three have been tried, but they have proved failures. We vote a sum annually for blankets, and a small amount for a gentleman at Mackay (on the Pioneer river) who has a good deal of influence among them and keeps them in pretty good order."

The information thus authoritatively given was loose, if not intended to mislead. A former ministry (Mr. Macalister's) had in 1876 appointed a Commission "to devise the best means for improving the condition of the aborigines." Bishop Hale, and Messrs. A. C. Gregory, W. L. G. Drew, C. J. Graham, and W. Landsborough, formed the Commission. They found that a "gentleman at Mackay," Mr. Bridgman, had procured a reserve of 10,000 acres on which he had induced the natives to congregate, and where during their occasional sojourn he exercised "a beneficial influence over them." The Commission recommended the establishment of a school there, and Mr. Bridgman induced his black clients to assist in building it. In June 1878, about twenty-three boys of the average age of 9 or 10 years had "reached the standard of attainment of the two lowest classes of the primary schools," which was deemed satisfactory, as they had to learn to speak English while learning letters. Thereupon other reserves were formed. The "experiment promised well," and Mr. Douglas, head of the ministry in 1878, moved for a grant of £1600, but "the motion was rejected without a division, and almost without discussion. The Commission were thus left without funds and obliged to abandon their work." In January 1879 the McIlwraith ministry came into power, and Mr. A. H. Palmer became Colonial Secretary. In March 1879, Bishop Hale, as chairman of the Commission, asked (in writing) whether there was any official report confirming a published narrative of a wholesale massacre of natives by a sub-inspector of police near Cook Town, and the Colonial Secretary "declined to answer any questions. This practically ended the career of the Commission. With no funds to do anything, and being unable to get a civil answer to questions which they were entitled to ask," their existence

[35] August 1880.

was practically ended, and Mr. Drew formally resigned.[36] Mr. Palmer's influence was not confined to prevention of efforts to do good. The ministry resolved to mar the work of the benevolent Bridgman. There were forty children at the school formed near Mackay when Mr. Bridgman left the district, and Mr. Jocelyn Brooke humanely undertook to become Protector of the Aborigines and prosecute the good work begun by Bridgman. Mr. Brooke wrote (23rd May 1880) :

"The present government with a view to retrenchment suspended the vote. The school was disbanded, and the reserve thrown open for selection. The blacks being uncontrolled, became a nuisance. . . . Having (formerly) made them useful to many of the residents, they requested me to apply to the government to be re-appointed. I did so, and was re-appointed by the Minister for Lands. Since then the blacks have not only been well behaved, but useful to the planters. . . . I have very little trouble with them. . . . They are very sensible and obedient—far more so than I have any right to expect. They can be led, but not driven. They offend often through ignorance, seldom wilfully. I am sure that though the native police may be necessary in outside places, still in the inside districts they might be done away with

The revocation of the reserve of 10,000 acres was the act of the government, but the pretence that the native police required enlargement, and that the general body were "honourable and amiable," was Mr. Palmer's. His jejune letter had only been written a few weeks when he resisted in Parliament the demand for inquiry as to the manner in which a revenue of a million and a-half sterling was administered by the government as regarded the dispossessed children of the soil, for whom, so long as the Imperial Government retained control, governors were specially enjoined to make kindly provision.

Let the Queensland crimes and neglect be contrasted with the deeds of South Australia. Missionaries supplied Christian charity, material aid such as they could give, and zealous labour. In 1878 the vote for money and goods for their use at various depôts and at four mission stations,

[36] The extracts in the text are from a memorandum on "the Aboriginal Commission" embodied in the pamphlet, "The Way we Civilize." It explains why Mr. Palmer so briefly but disingenuously replied to the formal inquiry addressed to him in 1880 about "government supervision." The reader will hardly be surprised to hear that Palmer has recently been added to the roll of knights which includes a man who quarrelled with O'Connell for objecting to blood-shedding.

Point Pierce, Point Macleay, Kopperamanna, and Hermansburg, was £5254. To aid the infirm by distribution of medical and other comforts there were fifty depôts. There was a fifth mission station at Poonindie, which received no pecuniary aid, but prospered by means of good management, and the labour of the natives. It had a reserve of 15,600 acres attached to it. The colony which made best use of its land was most generous in yielding a portion for the behoof of its natural children.

At Point Pierce they enjoyed a reserve of	12,800	acres.
At Point Macleay	4,498	,,
At Kopperamanna (Lutheran Mission) ...	64,000	,,
At Hermansburgh, Finke River	576,000	,,

The last-named station had recently been formed by the Lutheran Mission Association, and was not far from the border of Queensland, where, in the Gregory district, many foul deeds had been done in civilizing the blacks after the Queensland fashion, and whither the Commissioner of Police longed to send more armed men to do unreported deeds. The Hermansburgh missionaries had learned the dialect of their district; buildings were erected; a large tract was fenced; there were 2530 sheep, 100 goats, 32 cattle, and 52 horses on the station. The stationmaster at the Alice Springs Overland Telegraph station reported that the neighbouring squatters highly commended the mission, and that prejudice against it had been removed on seeing it. At Poonindie in 1878 more than 10,000 sheep were shorn, and 200 acres of wheat were reaped. In the same year at a ploughing match at Port Lincoln, a native won the first prize. The *Queenslander*, in July 1880, presented these and other facts to its readers. The Hermansburgh mission was near the Queensland boundary, and "specially interesting as situated in country similar to our own western interior. . . . The South Australians are free from the stains that rest on us, and by their action have proved beyond the shadow of doubt that we are neglecting a duty which we can easily perform, and which would by no means overburden our resources."

It is not easy to trace the deeds of Queensland, whether destructive or otherwise. A supporter of the existing atrocities admitted that it would be fatal to the usefulness of

the force if reports were exacted. The sums included in the Queensland estimates (adverted to by Mr. Palmer) as donations to the aborigines were merged in large amounts. Blankets for distribution were to be procured (1879) out of a sum of £20,000, but were subordinate to the previous requirements of "arms, ammunition, and saddlery for the police, stores and clothing for lunatic asylum and gaols, stationery and stores (blankets for aborigines) and incidental expenses." All men knew that much of the £20,000 was expended on the ammunition with which the blacks were shot, and on the wants of those who shot them. In the same way, under the law department, £100 were allotted for fees for defending aborigines and Polynesians. But when an officer was committed for wilful murder of a black boy, a Judge of the Supreme Court ordered the acceptance of bail, and the criminal absconded. How money was expended on the aborigines may be seen in the police report for 1878. Two hundred and six native troopers were maintained, and the Commissioner of Police required more. "The complaints of cattle-killing and hut-robbing by the blacks along the northern coast . . . are never-ending, and never will cease as long as there are blacks there." (He has) "pushed out one detachment on the Gregory and another on the Burke river . . . but this is insufficient; additional detachments are required." The very statistician seemed to fall in with the prevailing vice. The Registrar-General, Mr. Henry Jordan, found no place for the aborigines in his account of the population. In his table of "causes of death in Queensland" in 1878, "arranged in the order of degree of fatality," Mr. Jordan omitted the rifle. The object of the statistician was to record augmentation of figures. As the object of the government in Queensland would seem to have been to diminish the number of the natives, Mr. Jordan, wise in his calling, rejected them from the tables which he compiled.

The efforts of Victoria to mitigate the destroying effects of civilization deserve remark. A Royal Commission was appointed in 1877, "to inquire into the present condition of the aborigines . . . and advise as to the best means of caring for and dealing with them in the future." The Commissioners were Chief Justice Sir W. Stawell; Mr. F. R.

Godfrey; Mr. E. W. Cameron; the author of this work; Mr. A. W. Howitt (one of the authors of "Kamilaroi and Kurnai"); and Mr. J. G. Duffy. At that time under the care of the Rev. F. A. Hagenauer, a Moravian missionary at Ramahyuck (a station supported by the Presbyterian Church in Gipps' Land), more than 80 inmates were sustained. They laboured for themselves under the patriarchal direction of Mr. Hagenauer. Cultivation of arrowroot and hops yielded a third of the local income of £240. The government provided some stores and clothes; the Presbyterians maintained the missionaries. Twenty-one children were taught, and at the examinations by government inspectors had reached a higher standard than had been recorded in any of the State schools in the colony.

A Moravian mission, with about 60 inmates, was managed at Lake Hindmarsh by the Rev. C. W. Kramer. The Moravians had built the premises, and the manager guided the inmates in their work upon the station; but the smallness of the reserve (less than 4000 acres in a sterile country) impeded pastoral pursuits. The Church of England maintained, with aid from the government, two missions, one at Lake Condah, and the other at Lake Tyers. At the former there were about 80, at the latter about 70 inmates. The Board for the Protection of the Aborigines, established by the efforts of Mr. Heales in 1860, and empowered by law (33 Vict. No. 349) in 1869 "to protect and manage the aborigines," had two stations under their direct control; one at Framlingham near Warrnambool, the other at Coranderrk, 37 miles from Melbourne. The want of patriarchal guidance such as that exercised by the missionary pastor was felt at both stations, and their proximity to European townships subjected the inmates to temptation. Moreover, at Coranderrk the blacks were gathered from many distant tribes, and would have been somewhat less manageable in consequence, even if no township had been within two miles of the station. One hundred and thirty-five inmates were at Coranderrk, and the hops grown there in 1877-8 were sold for £1089. At Framlingham there were about seventy inmates. The total grant for clothing, stores, &c., for the year, at all places, was £7500. Humane persons aided the government in the distribution of comforts

to the scattered natives who had not been gathered at the fixed stations. The reserves of land at those stations had not been made with sufficient liberality to ensure a supply of animal food produced upon them; and there were some who grudged the extent reserved. The Commissioners recommended that the reserve at Lake Hindmarsh should be enlarged to 17,600 acres; that at Lake Tyers to 10,000 acres. The report urged that the colony was bound to temper to the aboriginal inhabitants the effect of the occupation by Europeans, and to grant the small sum needful to maintain the stations. Even if the race should be fated to disappear there would "survive the memory that the government of the day did not neglect a sacred duty to those who by no act of their own became subject to its control."

It was an ever-ready assertion of the ignorant that the aborigines were not capable of receiving the truths or consolations of Christianity. The examination of the Rev. F. A. Hagenauer ought to set that question at rest. Practical and capable as any layman in worldly affairs, he was neither over-sanguine in temperament nor liable to deception, while he was too devoted to his Master to mistake passive acquiescence for faith.

"Question. You have been more than twenty years amongst the blacks?—Answer. Close on twenty years.

Q. And you have no doubt read statements as to their incapacity to appreciate and take to heart religious instruction in the Christian faith. Now what is your experience upon that point?—A. You mean conversions to Christianity?

Q. Yes!—A. I believe I could give you over a hundred instances of men consistent Christians to the end, really and truly from first to last: their moral life and whole habits have proved it.

Q. So that you are quite of opinion that that statement is an error?—A. That is an error founded on an old supposition. I have just had a tract printed on the subject of our first convert, in which there are facts bearing on this point.

Q. Your life has been spent among them during those years?—A. Yes, and for their good.

Q. And that is the result of your observation?—A. Yes."

Gladly spending, and spent, for his fellow-creatures, the good Moravian will see them counted as jewels by his Master. But how does the heart ache to think of their countrymen throughout those twenty years done to death, and left mangled and stark on the soil of Queensland! It

was estimated in 1877 that about 500 natives were cared for in Victoria in the five enumerated stations, and that about the same number were scattered throughout the colony; a few in employment at settlers' homesteads; some wandering on the banks of the Murray river and elsewhere; some encouraged in loitering and debauchery at public-houses in remote districts. The rate of mortality in the latter case was, of course, appalling. The government of Victoria took no steps to improve the condition of the natives in accordance with the report of the Commission, or to dole out a few oboli from a revenue exceeding £4,500,000, or to afford the use of a few acres of land.

Western Australia, wide, waterless, and for long years poor in this world's goods, gave more out of her poverty than Queensland out of her wealth. There were less than 29,000 colonists, including children, in the west, but they provided honestly in their estimates for the aborigines. For board and clothing of children at Perth and Bunbury, for provisions, necessaries, clothing, blankets, and rewards for good conduct, for medical attendance, and aid to the Roman Catholic institutions at New Norcia, the sum of £1210 was in specific terms allotted in 1878. In that year, moreover, the revenue had fallen, and the emigrants were more in number than the immigrants; while in all these respects Queensland was prosperous in the eyes of those whose gospel was a catalogue of prices and exports. And yet the very secrecy with which Queensland shrouded her dark deeds, showed that she could not absolve herself in her own conscience, and the effrontery with which her public men rejected inquiry was in itself condemnation. Nevertheless she desired to extend her sway, and in 1883 her Agent-General, at the instigation of her Prime Minister, urged the Colonial Office to place New Guinea "under the immediate control of the Colony of Queensland," so that "law and order may be established amongst the mixed populations."[37]

[37] Parliamentary Papers, C. 3617. 1883.

CHAPTER XVIII.

POWERS OF HOUSES OF PARLIAMENT.

The mode in which the Constitutions of the several colonies worked, while new men courted popularity by creating resentment against a second Chamber, when it exercised legal and constitutional powers, deserves close consideration. In New South Wales the Upper House, nominated by the Crown, was jealously regarded by the elected Lower House on all questions affecting Money Bills. This was natural, and was not resented by the Council. The members nominated by Sir W. Denison stood so high in public estimation that it would have been difficult to create hostility against them. The roll of 1852 discloses the names of the Chief Justice Sir A. Stephen; Justices Dickenson and Therry; a retired Judge, the upright Sir W. W. Burton; Deas Thomson, Plunkett, and Merewether, distinguished members of the legal and medical professions; settlers; merchants; and others of high repute. The Constitution had provided a minimum of 21 members. In 1858 there were 42.

As difficulties have sprung from contests about the powers, and the composition of Upper Houses in Australia, a study of the position in each colony is requisite. The character of the members of the New South Wales Council preserved them for some time not only from general but partial obloquy. One or two individual railers there were, but they were in themselves so unimportant, and their scurrility was so ill-received by the public, that they served rather than injured those whom they reviled.

It has been assumed by some text-writers that there was a common design in Australia to define the powers and privileges of the two Houses in the colonies in exact conformity with those claimed by the House of Commons in England, but the assumption is erroneous. There was not one colony in which the Legislature which framed the Constitution aimed at a reproduction of those claims. Logically, indeed, they are themselves defective, if the undeviating contention of the Lords be allowed weight; and the general solvent of differences between the Houses in England has been that moderation in both, which has refused to allow theorists on either side to jeopardize the harmony essential to reasonable government under the law.

It is, perhaps, unfortunate that the text-book on Parliamentary practice, received throughout the empire, was framed by one who, from his position and the traditions of his house, found affinities in every claim advanced by the Commons, and shrank from giving weight to those put forward by the Lords. Thus much may be said without impugning the honour or the learning of a writer universally respected. At the same time, if anyone for literary exercitation were to array the cases in which the Lords have denied the claims of the Commons it would be seen that Sir T. Erskine May often accepted assertion as proof. One instance may suffice. After admitting that the right of the Commons in granting supply was confined for nearly 300 years to origination of, and that the Lords were not during that period precluded from amending Supply Bills, and frequently amended them, he states that on the 3rd July, 1678, the Commons resolved—

"That all aids and supplies and aids to His Majesty in Parliament are the sole gift of the Commons; and all Bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such Bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants; which ought not to be changed or altered by the House of Lords."

Sir T. E. May adds: "It is upon this latter resolution that all proceedings between the two Houses in matters of supply are now founded. The principle is acquiesced in by the Lords, and except in cases where it is difficult to deter-

mine whether a matter be strictly one of supply or not, no serious difference can well arise."

Thus the bare resolution of one House is put forward as final and acquiesced in by both Houses. But the Journals of the day show that the Lords on the very occasion which produced the resolution of the Commons, put forward counter-allegations which not only do not acquiesce in, but distinctly reject, the principle propounded by the Commons.

There were in June 1678 differences on a Supply Bill. There was conference between the Houses. On the 28th the Lords' members

"utterly denied any such privilege or rights in the Commons in relation to Bills of Money;" (and asserted) "that the sole pretence they had in matter of money was what we had, by the Act in Henry IV.'s reign, intituled '*Indempnity des Seigneurs et Communes*,' communicated to them, that Bills of Money should begin in their House; in all other respects and to all intents and purposes our legislative power was as full and free as theirs: we granted as well as they, they could not grant without us, not so much as for themselves, much less for us; we were judges and councillors to consider and advise concerning the ends and occasions for money as well as they till we had limited ourselves as aforesaid, and let them keep this as a *vexata quæstio* as long as they pleased, which their predecessors had not done and would not be for the good of the kingdom they should continue, yet we would still exercise our hereditary right of judges and counsellors to His Majesty in such cases."

A second conference was held, and again the Lords "utterly denied any such right in the Commons further than was agreed for the beginning of Money Bills only."

Then followed the resolution (3rd July) cited by Sir T. E. May. The bill amended by the Lords was abandoned; a new bill was brought in; it was passed on the 8th by the Commons, on the 12th by the Lords, and on the 15th July Parliament was prorogued. There were differences in subsequent sessions on the same question, and the Commons often agreed to amendments made in Money Bills by the Lords (whose acquiescence in the Commons' resolution of the 3rd July 1678 can hardly be maintained except by those who are so firmly persuaded that they ought to have acquiesced, as to be deaf to argument). That the right to reject Money Bills was never abandoned by the Lords, was asserted by one of the wisest of their number, Lord Lyndhurst, in 1860, in these words: "Over and over again, I repeat it, nothing can be found in the Parliamentary

Journals or in any history of Parliamentary proceedings, to show that our right to reject Money Bills has been questioned." It will be seen that in more than one Australian colony, a Lower House professing to rely on English precedent has averred that an Upper House cannot reject a Money Bill because it is conceded that the House of Lords cannot. These reflections on Parliamentary usage[1] in the mother country have been necessary as a guide in understanding events in Australia, where it will be found that, professing to respect that usage, rash innovators have been disloyal to it.

The New South Wales Constitution enacted that all taxation and Appropriation Bills should originate in the Lower House, and only there on recommendation from the Governor. Having clearly a lawful power to amend or reject Money Bills, the Council exercised it. That it did not use it offensively was testified in 1873 by a pronounced foe to a nominee House. Dr. Lang declared[2] that a "very favourable opinion was entertained by the public generally in regard to it," and that though he had vigorously opposed its constitution he had seen reason to change his opinion. Yet, when he and other witnesses asserted its popularity, it had in one session struck out a sum of £340,000 from a Loan Bill, and thrown out a Funded Debt Bill, intended to convert a deficit into a permanent funded debt. The latter course, though it excited the wrath of the ministry of the

[1] Among the lighter discoveries which a miner in Parliamentary tomes may make, the following is perhaps known to few. A Bill sent from the Lords was lost in the Commons. On 16th February 1677 the clerk was ordered to inquire after a Bill taken out of the House by some member. On 21st the Lords sent a message desiring expedition with the Bill. On the 23rd the Commons, "taking into consideration the ways and means of finding out the Bill that is missing, resolved That the protestation following be made and be subscribed by the members of this House, viz., 'I do protest before Almighty God and this honourable House that neither myself nor any other in my knowledge have taken away or do at this present conceal a Bill intituled, &c. In testimony whereof I have hereunto subscribed my name.' Ordered that the Clerk of the House do prepare a skin of parchment ruled with columns fit for members to subscribe the same." The Bill was apparently recovered by these measures, for (no new Bill with such a title having been received) a Bill with the same title was on the 8th March read in the Commons as an ingrossed Bill from the Lords.

[2] 'New South Wales Legislative Council Journals.' 1873. Evidence, Rev. J. D. Lang. Questions, 1458, 1497, 1498, *et alibi*.

day, was speedily justified by events, inasmuch as the consolidated revenue proved ample without the encumbrance with which the bill would have burdened the country.

On the money question the power to amend bills preserved New South Wales and other colonies from evils which a power restricted to rejection threw upon Victoria. But the serious danger which menaced New South Wales was latent in the constitution of the Council, and in the risk that a weak or unscrupulous Governor might be led by a reckless ministry to convert into an engine of party a senate which should have been a general safeguard.

Unable to carry his original scheme in 1853, Wentworth was fain to content himself with the temporary formation of a Council to endure for five years, unless in the interval the constitution of the Council should be amended under the power requiring the consent of two-thirds of each House. At the end of five years—failing any such amendment—members were to be summoned to life-seats. When Sir W. Denison appointed the original House, there was no doubt that he sought the fittest men; but no maximum limit of numbers was imposed, and ere long the Governor was urged to override the good sense of the Council by inordinate addition of members. Cowper, with Darvall, Parkes, and Dr. Lang, had laboured to obstruct Wentworth and Deas Thomson when the Council was first constituted. An instructive commentary upon their opposition to a nominated Council is furnished by the fact that Cowper was the first minister who proposed to sap the independence of the Chamber by new creations on a scale which was equivalent to a revolution. He feared that the Upper House might refuse to pass his measures. To obtain control of the whole body he asked the Governor to appoint fifteen new men (about 30 per cent. of the existing House). His pleas were the occasional difficulty in forming a quorum, and the strength of the opposition to the government. Sir W. Denison was willing to fill up vacancies, but "objected altogether to the principle of putting in members for the purpose of giving the ministry of the day a majority."[3] After vain insistence

[3] Confidential despatch. Sir W. Denison to Secretary of State, 5th April 1858. ("Varieties of Vice-regal Life,' vol. ii.," p. 435.)

Cowper yielded. Vacancies were filled up, and two new members were introduced on special grounds. Warned by the conduct of Cowper, Sir W. Denison represented that in framing a Constitution for the new colony at Moreton Bay, an elective Chamber should be substituted for one which a ministry might overbear at any time if a weak Governor's consent could be obtained. As his period of government was protracted till 1861, it seemed that he might be compelled to deal with the reconstruction of the New South Wales Upper House. The five years' term of the first House was to expire in May 1861, and in default of other provision a second House composed of members nominated for life was to succeed the first.

Sir W. Denison advised the Secretary of State that the new members ought to be independent men who would practically represent the permanent interests of the country. He left Sydney in January 1861. His successor, Sir John Young (afterwards Lord Lisgar), arrived in March. The old Council was to expire in May, and despatches in reply to Sir W. Denison's warnings were on the sea, when, at the beck of Cowper and Robertson, Sir J. Young lent himself to one of the most startling acts which any representative of the Crown was ever asked, or ever consented, to perform. Robertson's Land Bills were before the Houses, and no agreement had been arrived at on the 10th May. The five years' term of the Council was to expire on Monday the 13th. A jejune attempt by the ministry to deal with the Constitution of the Council proved abortive. Cowper determined to create new members to overbear the existing councillors. He told the Governor that he could perceive no alternative. Many of the most reputable of his acquaintances declined to aid him. He and his colleagues sent missives and personally implored coy recusants. The matter became the talk of the town. Failing to find friends in halls of council, he rushed to the streets. Meantime the preliminary courtesy of communicating with the President of the Council was neglected by the Governor. When a ragged regiment of twenty-one victims was ready to be sworn in on the 10th May, a verbal intimation was afforded by Mr. Robertson, to Sir W. W. Burton, who for three years had officiated as President of the Council.

The commissions were sent to the House, and the expectant members assembled outside the Chamber to collect their energies for the task of overbearing the senators who dared to resist a ministry so puffed with anticipation of triumph as to appear blind to the nature of their acts. Before he took the chair Sir W. Burton saw a packet of papers arrive, but did not heed them. From his place in the House he informed the members of the discourtesy shown, and the verbal communication made to him. "I have held the office of President in honour, and as I cannot now consent to hold it in dishonour I have resigned not only my office of President, but also my seat as a member of the House." Gravely he left the Chamber, followed in like manner by Deas Thomson and other members, leaving a baffled minority quorumless behind them. Scarcely had the plotters begun to think of their position when the voice of the Clerk of the House, in formal tones, announced that no ingenuity could extricate them from the pit into which they had fallen. The 10th was "the last sitting-day" of one week; Tuesday the 14th would in ordinary course be the first of another. But the House would die on Monday the 13th. "It is now my duty (said the Clerk), in the absence of the President and Chairman of Committees, to declare, under the 7th section of the standing orders, that this House stands adjourned until the next sitting-day"—that day which never was to come.

The accents of some who had come to swear lawfully in the House were converted into unlawful curses outside of it. It is not too much to say that honest men breathed freely, and Sir W. Burton, who had foiled the conspiracy against the Constitution, was the hero of the hour.[4] Nine-

[4] It is perhaps worth while to mention that Dr. Lang described the conspiracy as having succeeded. In his "Brief Sketch of My Parliamentary Life and Times" (Sydney, 1870), he says:—"The old gentlemen of the Colonial Upper House . . . had but slight sympathy with the rights and interests of the people, and the government of the day had accordingly to treat them in precisely the same manner as Earl Grey was empowered . . . to treat the House of Lords in 1832, by introducing a sufficient number of men of liberal principles . . . It is well known that this swamping process was not carried out in the House of Lords . . . but it was carried out here in real earnest; the President and his sturdy Conservatives vacating their seats and leaving the House for good

teen other members resigned their brief tenure of seats, and published their congratulations to Burton on his resistance to the blow aimed at the independence of the Council, and fraught with "imminent hazard of the subversion" of the Constitution. Sir J. Young strove, while accepting the resignations, to allay excitement by regretting that such a large number of highly-respected gentlemen should, from whatever cause, have decided upon withdrawing. Cowper, sore under defeat, impugned in the Assembly Burton's narrative to the Council. Burton, in a newspaper, corrected Cowper's "garbled and incorrect statement." Addressing the latter he hoped that "in all your words and deeds (you may be) as truthful as I have been in this, in which I have been vilified by you; and that you may feel some shame—may it be soon—for that scandalous act."

War to the knife being proclaimed by Cowper, and his colleagues being reckless, timid men trembled for the future. The Governor, ready at their bidding to assassinate the independence of the first Council, would, it was feared, make the second the mere creature of Cowper. But the stars in their courses were fighting against the plotters. Despatches from England approved of the principles on which Sir W. Denison had recommended that the new Council should be constructed. Formal Royal Instructions (of 5th March 1861) arrived, and however ready to tamper with the welfare of the colony, Sir J. Young was not so quixotic as to jeopardize his own.

Another incident startled the petulant ministers. Wentworth had returned to the colony just before they laid violent hands upon the Constitution with the Governor's connivance. The harbour was crowded with steamers; music of congratulation echoed over the waters, and thousands upon thousands poured forth to welcome back their countryman now verging towards the ordinary span of life, and returning from that visit to England in which he had been entrusted with the duty of promoting in its

when the *novi homines* . . . were actually brought in to swamp them." Persons unacquainted with Dr. Lang's character would probably be loth to credit a general statement that he was so ignorant as to misunderstand or so untruthful as to misrepresent the facts. His own words are therefore cited.

integrity the Constitution Bill which Lord J. Russell maimed. The day before Sir W. Burton foiled the ministry in the Council Chamber, Wentworth received a public address in the Hall of the University. He had outlived the unpopularity which for a time was fastened upon him by his detractors. Eccentric as his countrymen had been, wildly as they had wandered from the paths he had shaped for them in the Constitution, mangled as that Constitution had been by Lord J. Russell and others, and popular as had been the wrong done to it, nevertheless, in their hearts, men knew which among them had really been wise, and that though they had been unworthy of his work the hero of Australia was again among them.

What would be Wentworth's reflections upon the shattered framework of the Constitution which he had constructed for them? What opinion of the patriotism of the men of the day could he entertain on finding that in their greed for office they had, within four years of the coming into operation of the new Constitution, formed seven ministries; that Cowper had been at the head of three of them, and was apparently ready to accept colleagues of any profession so long as he could retain office with or without change of policy? Intriguers were abashed for a time. Sir J. Young told Cowper that he was bound to respect the recommendations of Sir W. Denison, approved in England. He could not consent to create a house of partisans. Cowper became submissive. He yielded to the Governor's desire that Wentworth should be consulted, and that the honoured J. H. Plunkett should be offered a seat.[5] The good sense of the public was for the time master of the situation. The voice of the streets was hushed. Sir J. Young did not (so far as printed despatches reveal the facts) report fully the episode in which he had been so graceless an actor. A Governor, in a later period (1872), however, left a record that the Secretary of State "merely expressed his regret at the course adopted by the Governor, which did not appear to him to be justified by the urgency of the occasion."

[5] Cowper had quarrelled with Plunkett, who in dudgeon had resigned all his appointments. "How can I, your Excellency, offer a seat to Mr. Plunkett, who has grossly insulted me?" Cowper said. "Have you any objection to my offering it to him?" was the answer which prevailed.

From that record may be gathered the narrative which Sir J. Young gave in 1865 of the steps he took in 1861 to undo the work which he consented to do in endeavouring to throttle the Upper House at the instigation of Cowper and Robertson.[6]

"I consulted . . . the Ministers then in office; and also with their cognizance I availed myself of the advice of gentlemen of social standing and of leading position in other sections. In fact I called into counsel under the auspices of Mr. Wentworth, the framer of the Constitution Act, several gentlemen of various political opinions, who were at the time prominent in Parliament or in possession of much general influence. It was understood that Mr. Wentworth was to be President of the new Council, and I appointed him to the office as soon as it was formed. After many interviews and much deliberation, it was the general opinion of those gentlemen that twenty-seven members might with advantage be considered a convenient usual limit of the Council, and with this view I concurred. . . . Several declined, and eventually twenty-three only

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[6] Extract (from despatch of Sir J. Young to Secretary of State, 16th February 1865), contained in despatch of Sir Hercules Robinson, 27th August 1872, to Secretary of State. "New South Wales Legislative Assembly Papers," 1872-3. It was no secret in 1861 that the Secretary of State's despatch inflicted severe censure upon Sir J. Young In 1872 its terms were made known in a New South Wales Parliamentary Paper, thus:—

DOWNING STREET, 26th July 1861.

SIR,—I have to acknowledge your Despatch No. 37 of the 21st May, enclosing a copy of the Proclamation by which you had prorogued the Parliament of New South Wales on the 11th of that month, in consequence of the approaching expiration on the 13th of the period to which the first nominations to the Legislative Council were limited.

With regard to the reconstruction of that body I have nothing to add to my Despatch of the 4th of February last, the recommendations of which I am glad to hear from you will not be overlooked by yourself and your Ministers in taking the measures necessary for the purpose; but I cannot pass by without notice your report of the means which you took, by the advice of your responsible advisers, to ensure the passing of the Land Bills through the Legislative Council; the creation, namely, upon a sudden, and for a single night, of a number of Legislative Councillors, which you do not specify, but which must have been sufficient to convert a large majority against the Bills into a majority in their favour.

I am fully sensible of the very difficult position in which you found yourself when pressed to take such a course, under a threat of resignation by Ministers whom you say you could not have replaced. I regret, however, that they should have offered you that advice, and that you, even under the circumstances which you describe, should have accepted it.

A measure so violent, and in its nature so unconstitutional, could only be justified by circumstances of the gravest danger and the greatest urgency, which did not, as it appears to me, exist on the present occasion. Your resistance to it could only have led to the same state of things (after, perhaps, a Ministerial crisis) which has actually resulted from the defeat of the attempt to force the Bills through the Council by the counter stratagem to which the Opposition resorted, and would, I can hardly doubt, have received a large amount of approval and support from the public opinion of the colony, irrespectively of the merits of the measures which happened to be in question.

I have thought it my duty to say so much by way of comment upon a proceeding which is not creditable to the cause of constitutional government in Australia, while it tends to weaken the position of the Governor; but I can at the same time make great allowances for the difficulties of the dilemma in which you found yourself placed so soon after your arrival in a new sphere of duty, and I am sure that you acted as appeared to you, at the moment, best for the public interests.—I have, &c., NEWCASTLE.

Governor Sir John Young.

were gazetted. That number was not subsequently augmented beyond twenty-six during that Administration, which lasted nearly two years and a-half afterwards." (It was not contemplated by these arrangements to set aside the Constitution, or absolutely tie the hands of future Ministers, or relieve Governors of responsibility) "but I thought what was then done might with advantage be referred to thereafter by myself and others, not as an absolute guide, but as giving the assistance of able and impartial men, who were all equally anxious for the permanent stability of the Constitution."

Writing four years after the event, Sir J. Young slurred over the controlling motives of his repentance in 1861. A thwarted plot against the Constitution; public contempt; and the opportune return of Wentworth made the baffled ministry accept the terms imposed.

The minutes of the Executive Council, in June 1861, record the humility displayed. His Excellency "invites attention" to the "necessity which exists for the appointment of a new Legislative Council," and produces a "list of twenty-seven gentlemen to whom it appears to him that seats may, with propriety, be offered, and desires the advice of the Council on this point, and generally in reference to the question." The Council "approach a decision with feelings of no ordinary anxiety." They think the Legislative Council should be elective; that the lapsed Land Bills ought to be passed; that the ministry ought to have a fair working majority, &c.; but they believe that "the list submitted to them by his Excellency will give the government a fair working majority," and, "in the expectation that the gentlemen named in it will adopt these principles in deference to public opinion, and in a generous spirit, they are prepared to advise that seats should be offered to them respectively." They ask that a copy of their opinion may accompany his Excellency's offer of a seat in each case, "and as a fitting tribute to the eminent services conferred by Mr. Wentworth upon the colony, they finally advise that his Excellency should request him to accept the office of President." Wentworth consented (in his own words to the Legislative Council) in order that he "might assist in preparing a Constitution for this House which should supersede the present Council, and prevent the recurrence of any future attacks upon its independence."

Not one of the twenty-one myrmidons whom Cowper employed on the 10th May to strangle the old House found a seat in the new. One to whom a seat was offered declined to accept it. The only consolation Cowper retained was the fact that in order to reconstitute the Upper House on a sound basis, Wentworth was willing that no indiscriminate opposition to the Land Bills should be displayed in it. Deas Thomson, F. L. S. Merewether, Dr. Mitchell, and G. K. Holden were restored to the places which they had, like Sir W. Burton, refused to retain in dishonour. Other persons of social repute were called in. Plunkett and Sir William Manning agreed to aid the veteran Wentworth, and though not without friends in the new body, the ministry could expect no obsequious followers. Out of twenty-six persons to whom seats were offered, seventeen accepted in a spirit which gratified the Governor-in-Council. Three others qualified their acceptance in a manner which was unsatisfactory, but were nevertheless appointed. Five declined altogether. Eventually (24th June), the roll was made up to the number of twenty-three, and the records of the Executive Council state: "The Council express themselves much gratified that Mr. Wentworth has acceded to their wish" that he would accept the office of President.

Sir William Burton, who disarmed the assassins of the Constitution, was not again made one of its guardians. He announced that though he had hoped to spend the evening of his life in Sydney, the non-offer of a seat in a new House was to him a sign that, being thus placed in retirement, he had better end his days in the land of his birth. But the spirit which he had done so much to evoke did not evaporate at his departure. That the compact of 1861, which contemplated the appointment of "able and impartial men, anxious for the permanent stability of the Constitution," was respected by successive Governors and ministries, was known at a glance by the names of persons who accepted seats. Blaxland, Ogilvie, James and William Macarthur of Camden, Campbell, Scott, Icely, Wallace, Chisholm, and Cox are to be seen amongst those appointed within ten years. But Wentworth was too sagacious to look for permanence of the influence which his presence had exercised in the formation of the new House.

The nominee body was not his original proposition. It was the alternative forced upon the Legislature when, in 1853, his proposals—of an hereditary order which should in process of time, like the Scotch peerage, elect legislators—clashed with the comprehension of those around him. But the danger of "swamping," as the act of Cowper was called, was not unforeseen when the Council was first constituted.

The Chief Justice had hinted in 1853 that "in a generation or two hence" an Australian ministry might procure "a subservient and ductile majority" by nominating "a dozen or a score of partisans."[7] The evil which had then seemed distant, became in 1861 a living portent: nay, had Sir J. Young and not Sir W. Denison been Governor in 1858, it would have given a deadly blow to the Constitution soon after its creation. It was felt that though the compact between the Governor, the ministry, and Wentworth, in 1861, was good so long as, like Washington's words, those of Wentworth might prevail with his countrymen, it would be well to place the independence of the Council beyond the reach of unscrupulous ministers or weak Governors.[8] The ministry were committed to the attempt to constitute the Council on an elective basis. To facilitate his labours Cowper removed from the political arena a popular antagonist, Henry Parkes.[9] Him he sent with another orator, Mr. W. B. Dalley, to act as salaried agent in England in promoting emigration to Australia.

In 1861 the Cowper Ministry introduced in the Council a bill to render that body elective. The bill was referred to a Select Committee, of which Wentworth was chairman. A Progress Report (Jan. 1862) recommended that Mr.

[7] "Thoughts on the Constitution of a Second Legislative Chamber for New South Wales." By Sir Alfred Stephen. F. M. Stokes. Sydney: 1853.

[8] There had been previous attempts to reconstruct the Council. A Bill for the purpose was introduced by a short-lived Ministry under Mr. W. Forster (1859-60), but he was driven from office upon it. Mr. Parkes animadverted bitterly in 1860 against failure by successive governments to remove the nominee House from the Constitution.

[9] After a dissolution in 1860, Parkes (addressing the electors), in defending the defunct Assembly, "admitted that there was no man in it who was endowed like Mr. Wentworth with that subtle and wonderful order of ability which is comprehended in the word genius."

Hare's scheme of proportional representation should be considered with a view to its application in reconstructing the Council in the next session. In June 1862 the Attorney-General reintroduced the Government measure, which contemplated manhood suffrage as the electoral basis for the Council as well as for the Assembly, but provided larger electorates for the former than for the latter. On the motion of Deas Thomson (18th June) the Bill was referred to a Select Committee of which Wentworth was chairman. On the 22nd August the Committee reported the Bill with large amendments.

The new House was to contain forty members, of whom ten might be selected by the Crown from retired Judges; members (for not less than two years) of the Executive Council; ex-Presidents or ex-Speakers; or persons who had sat for seven years in the Legislative Assembly. Hare's system of election was to be adopted. The whole colony was to form one electorate. The suffrage was to be conferred on freeholders of £20 value, on leaseholders, or householders . . . of £50, and on members of learned professions, graduates of universities, and retired officers of the army or navy. The President of the Council had the privilege of speaking on measures in the House, and (10th Sept. 1862) Wentworth supported the Bill, not as the best theoretically but the best procurable.

"I never contemplated when I lent my hand in the framing of the Constitution, which is now nothing but a word, *vox et præterea nihil*, that any ministry in this country would have the audacity to sweep the streets of Sydney in order to attempt to swamp the House by the introduction of twenty-one members. This was a contingency which, I admit, I did not foresee, and I cannot conceive how any man of honour and principle could foresee such an event . . . knowing as I do that a bad precedent may easily be followed, and no doubt will be followed, if any supposed necessity of the same kind exists, I am driven to look for something else, driven against my will—and I see no other alternative but to adopt in the Constitution of this House some modification or other of the elective principle.[10]

[10] Note, 1896.—Some years before the attack by Cowper and Robertson on the Council in Sydney, the author had much conversation with Wentworth, who deprecated the adoption of the elective principle for the Second Chamber. He admitted, however, that as the community of Victoria was of more recent growth than that of New South Wales (it was 76,000 in 1850, and had grown to 312,000 when the Constitution Bill was framed in 1854), it might have been prudent, if not necessary, to make the Upper House in Victoria elective.

. . . From the time of landing, indeed long before, I felt there had been a dangerous and destructive innovation upon the Constitution of the Lower House . . . that the ultimate results would be a degeneration in that House . . . that the only safety that remained for the country was in the Constitution of a proper Upper House, that may resist dangers and the unconstitutional authority that is confided to the Lower. Of that opinion I still remain." (He feared with regard to the Bill the) "probability that it will be rejected, and that this branch of the Legislature will remain as it is for some sessions longer. Well, I shall regret to leave the country with this branch of the Legislature exposed to the perils which I know sooner or later will result in its degradation; but it is much better undoubtedly that things should be as they are, rather than that a Constitution should be accepted, based upon manhood suffrage, or otherwise than upon a property qualification."

Alluding to the crisis of 1861, he grimly said: "I do not myself think that with Sir John Young as Governor there will be another attempt to introduce twenty-one new members among us."

The second reading of the Bill was passed by a majority of nearly three to one. It was read a third time (8th Oct.) and four members were deputed to carry it to the Assembly. On the following day Wentworth announced his intention to retire. The members were "probably aware" that his motive in becoming President was to assist in preparing a constitution for an Upper Chamber, guarded against "attacks upon its independence." The Bill matured by the House had been sent to the Assembly.

"What may be the fate of that Bill I know not, and, to speak candidly, I care very little, for I have my misgivings about the bill." (The qualification of electors was too low; the absence of qualification of members was unwholesome.) "If the measure comes back to this House at all, I hope the House will take it in its entirety, and that they will not submit to any mutilation or changes in its essential parts. . . . I myself concurred in the adoption of the elective principle in consequence only of that recent event in the history of this House to which I have on a former occasion alluded." . . . "If I could believe, or if any reasonable assurance could be held out to this House that any additional nominations would be made here on the same principle on which nominations are made in England; if I could only come to the conclusion that no improper attempt to swamp this House, and in that way control the plenary power of action that is essential to its existence, would be resorted to, I would never have consented to change the nominative principle in this House for the elective principle. For it is no part of the Constitution of England that the elective principle should be extended to both branches of the Legislature. I think we ought to take our stand upon the ancient foundations of the Constitution as far as we can."

If the Bill should not be received by the other House without alteration, he hoped no second proposal of the kind

would emanate from the Council. The Attorney-General was profuse in compliments to him. Deas Thomson in touching tones tendered a sympathy deeper than that of Cowper's colleagues, and hoped that Wentworth's warning words would be pondered by all. Then the old man, with brief but eloquent words of thankfulness to the House for its courtesy, passed away from it. Before the Bill was read a second time in the Assembly, he had left his old home never to return to it alive. By his own desire there was no public demonstration at his departure. His return in the previous year had been triumphal, and his statue had been unveiled in the University while he was presiding in the Legislative Council. His return to the colony was contemplated, and his friends abstained from public display. Among those who went on board to pay parting respect, were Cowper,[11] Robertson, and another member of the ministry.

The leading newspaper declared on the day of his departure, that if nothing else had resulted from his influence than "the selection of the present members" of the Legislative Council the colony would be deeply indebted to him. "His last warnings sound like the last words of history, so fortified are they by his long experience."[12] It was well known that the sturdy tribune of ancient days in defence of public rights, and the scornful denouncer in recent times of popular delusions and excesses, was indifferent to praise or censure lightly given and lightly withdrawn. His enemies accused him of being false to his old principles. He thought that they had none of their own. His friends deplored that the degradation of the community seemed to ostracize him from the land. Though he lived more than nine years after his last public service

[11] Cowper, Robertson, Hargrave, and another colleague left on record a remarkable proof of the manner in which public veneration extorted from them a tribute to the man whose labours they so often endeavoured to neutralize. At the Executive Council Chamber (13th Oct. 1862) they recorded "the deep sense which they entertain of the valuable services rendered to the colony by Mr. Wentworth in having accepted the office of President of the Legislative Council, and of the manner in which he has fulfilled the important duties of that high position during a very critical period in the history of the colony." "New South Wales Legislative Council Journals," 1873-4.

[12] *Sydney Morning Herald*, 22nd October 1862.

to his country, he never returned to it. Yet he yearned for it in spirit, and in accordance with his wish was buried there, amidst profound and universal respect. If it be thought by anyone that personal prejudice has warped the judgment of the writer, the fear may be allayed. Publicly he often listened to Wentworth, but never was amongst his private associates, though for many years accustomed to converse with him in public places. On public grounds history, if truly written, is compelled to pay tribute to the man, and on those grounds alone is it paid in these pages.[13]

[13] Perhaps it may be well to mention in connection with his last appearance in the political arena some facts respecting the close of his career. In 1853 his admirers collected funds to defray the cost of a statue of him. In 1862 the statue (from the chisel of Tenerani) was unveiled in the hall of the Sydney University. Mr. James Martin delivered an eloquent oration in the presence of the Governor and assembled notables. "Though they break their idols as often as they make them the people in the long run learn to do justice to their benefactors, and Mr. Wentworth has enjoyed the singular good fortune of living to see conferred upon him an honour which is usually witnessed only by a man's posterity, and to see it conferred with the assent and applause, not only of those who have ever been his friends, but of those who were amongst the most bitter of his opponents. He has outlived the envy, hatred, and malignity which inevitably cross the path of every man who becomes eminent in public life; and now in his green old age, with his mind still clear and his faculties still unclouded, he has been allowed a foretaste of the posthumous renown which awaits him." A portrait of Wentworth is in the Parliament Houses in Sydney. He died in March 1872, having desired to be buried at Vaucluse, so long his residence on the shores of the Sydney harbour. Both Houses of the Legislature requested his widow to allow a public funeral to be accorded to his remains. When Sir James Martin moved the resolution in the Assembly it was seconded by Mr. Parkes, who regretted his past "feeble opposition" to Wentworth. When the resolution was put by the Speaker every member stood up. In the Council a member of the ministry moved, and Deas Thomson seconded, the resolution, unanimously carried. Deas Thomson testified that never, even in England, had he heard a more powerful debater than his "late honoured friend," and deplored that Wentworth's Constitution Bill had not been passed in its integrity. The previous speaker had called the Constitution "a great boon." Deas Thomson believed "it would have been doubly successful" if Lord J. Russell had not tampered with it in spite of the pleadings of Wentworth when the Bill was discussed in England, and Wentworth and Deas Thomson, as its promoters, had interviews with members of both Houses at Westminster. Wentworth pleaded in vain. "It so happened that Lord John took a different view." Deas Thomson joined in "doing every possible honour" to him "whose reputation for all time to come as the greatest son of Australia would last as long as the country itself lasted." The speaker uttered the public thought. The streets, the avenues to them, and every coign of vantage were crowded. Public

It may appear strange that, after declaiming for years against a nominated House, Cowper and his colleagues, when put in possession of a Bill in which the Council had accepted an elective Constitution, let the occasion slip from their grasp. But the reasons which weighed with the Council were not satisfactory to Cowper. Their Committee reported:—

"Whatever diversity of opinion may have formerly prevailed as to the comparative advantages of nomination and election, circumstances have since arisen, now matter of history, which have given the question a new aspect, and have induced a disposition to co-operate in the framing of a measure by which the elective principle may be applied to the Council. . . . At the same time your Committee are far from admitting that in applying this principle the Council should rest on the basis of manhood suffrage as proposed in the (government) bill referred to them. They believe, on the contrary, that with regard to the Constitution of an Upper Chamber such a course cannot be adopted without setting at nought all the experience of history, and the warnings of all the great statesmen and philosophers by whom its lessons have been expounded."

The ring of Wentworth's voice was in these words. Cowper's hypocritical homage to Wentworth did not extend to the bill. It was not until the 12th November that he nominally moved its second reading, and expounded alterations which he intended to make. One member said it was disrespectful to strangle the Council Bill in the manner proposed. Mr. William Forster said it would be better to reject that bill and introduce Cowper's as a new measure

functionaries, representatives of all public bodies and of all denominations, joined in paying tribute. St. Andrew's Cathedral, to which one of Wentworth's recent acts had been the presentation of a costly Communion Service, was densely crammed while the funeral service was performed before the procession wended its way to Vaucluse on the 6th May 1873. The utmost decorum was "observed (*Sydney Morning Herald*), and the noisy hum of conversation was immediately stilled upon the approach of the procession." After consecration of the ground by the Bishop of Sydney and the conclusion of the religious services, the Bishop briefly alluded to the great orator and statesman interred there according to his own affectionate desire. "Those who loved him best have the consolation of knowing that the close of his life was a fitting preparation for one about to appear before an unerring Judge." Sir J. Martin then delivered a commemorative address. "Hereafter the best and ablest may gather lessons from the life of William Charles Wentworth, and catch perchance some inspiration from his tomb." Such were the last words of an address too eloquent to be marred by fragmentary quotation, and which was printed with a public record of the funeral. (Sydney. Thomas Richards, Government Printer, 1873.)

rather than read the former a second time and aid Cowper to destroy it. Another said that nothing but universal suffrage would suffice. Dr. Lang wondered at some of his friends. Once thought extreme in his opinions, he found himself now a laggard. He would have again the Constitution of 1843, with one Chamber, two-thirds elected and one-third nominated. By 24 votes against 20 the second reading was carried (13th Nov.). A member was compelled to withdraw a statement that the bill had been carried by "votes of sneaking cowards, who came in and voted for the ministry without assigning any reasons." A struggle amongst members in the lobbies ensued before (by 19 votes against 17) the committal of the bill on a future day was agreed to.

On the 26th November Cowper suggested a further postponement. Eventually the bill was shelved by 33 votes against 15. Dr. Lang was in the minority; and Cowper was in the majority with his principal antagonist, William Forster.

Mr. Piddington exposed the insincerity of the ministry by pointing out that among the 33 who threw out the bill there were ten members who had voted for its second reading.

Mr. Terence Aubrey Murray, Speaker of the Assembly, was on Wentworth's retirement appointed President of the Council. He carried thither the traditions of the Speaker's chair. Wentworth had in the Council on one occasion given a cursory opinion that an existing Standing Order, relative to the adoption of usages between the two Houses, limited the powers of the Council. Subsequently he pronounced that, under the Constitution Act, the powers of the Houses were co-ordinate, except as to the mere right of origination of Money Bills; that, therefore, the Standing Order in question was "*ultra vires*, and consequently did not, and could not, limit the powers of the House with regard to Money Bills." Before Wentworth's departure from the colony Murray ruled that the Council could not interfere with a Money Bill. The day after his departure Sir W. Manning moved, and Deas Thomson seconded, a motion declining to concur with Murray's ruling, and the motion was carried by 16 votes against 3.

The failure to reconstitute the Council in 1862 was not followed by earnest action or remonstrance. Subsequent events in the neighbouring colony of Victoria induced doubts in New South Wales as to the superiority of an elected Upper Chamber. A ministry, under Mr. McCulloch, unable to overbear the elected Council, and having no power to create members in it, determined, by "tacks," and in defiance of the Constitution and of all Parliamentary usage, to compel the Council to submit wholly to any and every demand. Although the electorates in Victoria had frequently lacked appreciation of the momentous consequences involved in choosing members of the Council, the inherent strength of the representative principle was such that the McCulloch Government could not shake it. The men in the Sydney Council were more experienced than those in Melbourne, but their support throughout the territory was not so widely based. There was no place in Victoria so remote that it had not five representatives of one of the six electorates.

The McCulloch Government, savage at defeat, and too reckless of the public weal to wait for the biennial elections to the Council, which periodically gave the electors power to dismiss one-fifth of the whole House and choose new men, plunged the colony into confusion by refusing to send up an Appropriation Bill framed in proper form. They created wonder in neighbouring colonies by asserting that the "deadlock in Victoria" was due to the tyranny of the harmless Council, and not to the encroachments of the ministry.

The troubles in Victoria somewhat allayed the fervour of those who had craved an elective Upper Chamber in Sydney. Advocates of an elective House began to fear lest it should become a power in the land. Supporters of nomination dreaded that election would produce an inferior body. Moreover, the implied compact under which, guided by Wentworth, Sir J. Young had dealt with nominations to the Upper House was found more efficacious than some persons had expected. He consented in 1863 to raise the total number of members at his ministers' request, so that there might be twenty-seven available members at a time when four were absent; but in 1865 he refused to appoint

two members, though urged to do so by the same ministry (Martin's). His resolution was approved by Mr. Cardwell, who considered the Governor's reasons for refusal sound and convincing.[14] In 1868 three additional members were appointed with the nominal object of securing attendance in the House. Lord Granville regretted the Governor's compliance, "as he feared it would be used as a precedent for further additions." When Martin was again out of office, his successor (1868), Mr. J. Robertson, took exception to Lord Granville's regret. Lord Granville (Oct. 1869) pleaded, that though the number of members was not limited by law, and though, "on certain critical occasions, it might be expedient or indispensable to bring the two Houses into harmony by creating, or threatening to create, a number of Councillors sufficient for that purpose," the value of the Chamber would vanish if each ministry could add to it at pleasure. "To prevent this, some constitutional understanding having, in the public eye, the form of a valuable though not absolutely inflexible precedent (was) desirable. Such an understanding did, in fact, exist between Sir J. Young and his successive ministers." Lord Granville's former despatch was intended to show the "inconvenience of violating that understanding, and to urge that creations should be resorted to, not to strengthen a party, but in reality for the convenience of legislation."

The unwritten law imposed by the "understanding" of 1861 was potent enough to justify the Governor (Lord Belmore) in refusing to appoint three additional members in December 1869. The refusal was sustained in England. In August 1872 another Governor, Sir H. Robinson, was

[14] An extraordinary *hiatus* occurs in Todd's ("Parliamentary Government in British Colonies") narrative of the conduct of Sir J. Young with regard to the nomination of members in Sydney. He tells of Sir W. Denison's refusal in 1858 to gratify Cowper by "increasing largely the number of members;" and then, omitting all mention of the crisis of 1861 in which Sir J. Young was conspicuous, points out that in 1865 the Governor "declined to sanction" the appointment of two members (pp. 448, 449). Sir J. Young (who became Lord Lisgar) went from Australia to Canada. It would almost seem that, as in some ancient dynasties, unpleasing records were erased, and that on the pages which should have apprised the Canadian historian of one of the most dramatic historic events of Australia he found only a blank.

able to write that "the spirit of the understanding of 1861 has been adhered to up to the present time." Mr. Parkes, who formed a ministry in 1872, wished to raise the number of members to thirty-six; but Sir H. Robinson thought thirty quite as good. Mr. Parkes strove to repel any Imperial interference or advice, but Sir H. Robinson pointed out that, in the past, Governors had in every instance acted on their own responsibility, "without previous reference to the Secretary of State," and that the latter had simply expressed his opinion as to the propriety, or otherwise, of the Governor's proceedings." Lord Kimberley hinted (Nov. 1872) that the "arrangement" of 1861, by which alterations in the Constitution had

"been avoided must be held to have acquired a certain force and value, and that in default of any fresh enactment there is nothing inconsistent with the proper working of the Constitution in maintaining it. For the sake, therefore, of the permanent interests of constitutional government in the colony, . . . I shall be glad to learn that your ministers have thought it better to abstain from inviting you to depart from the understanding which has hitherto prevailed."

The response of Mr. Parkes to this appeal was the introduction of a bill in the Assembly "to provide for the representation of the people in the Legislative Council." He admitted that there had not been any active opposition "for some years past" to a nominated Chamber; but in theory he thought it indefensible. It "did violence to the first principles of representative government." His plan was to have thirty-one members nominated, and thirty-six members elected by twelve electorates. All householders and many lodgers were to be voters. One-third of the members were to retire "every two years;" but, notwithstanding the rotary retirements, whenever the Assembly might be dissolved one-third of the elected members were to vacate their seats. Lot was to determine who were to retire, and "It was thought that this would work in a very salutary and satisfactory manner, and would have great influence in tending to bring the Houses into harmony on all questions of magnitude and importance."

Mr. Parkes carried his eccentric bill in the Assembly. It reached the Council on the 2nd April 1873. The President pointed out that a bill dealing with either branch of the Legislature ought to originate therein. Mr. Docker,

who had represented ministries in the Council more than once, moved, "That this Council declines to take into consideration any bill repealing those sections of the Constitution which provide for the constitution of the Legislative Council, unless such bill be originated in this Chamber." He quoted leading authorities. Mr. Samuel, Postmaster-General, admitted that the bill ought perhaps to have been initiated in the Council, but begged members "not to stand on points of etiquette."[15] He risked a division, and was left alone; while, in an array of twenty, Docker was supported by the venerable Deas Thomson, by Sir W. Manning, Sir W. Macarthur (of Camden), by Messrs. W. Busby, Ed. Ogilvie (of Yulgilbar, Clarence River), and others who commanded public respect. .On a subsequent day Mr. F. M. Darley, an eminent barrister (afterwards Chief Justice), carried a resolution that the division should be recorded, although Mr. Samuel's forlorn isolation had excluded a formal entry in the journals at the time. The resentment of Mr. Parkes was not responded to by the public. On the contrary, the public funeral of Wentworth, in May 1873, evoked the people's sympathy in a manner which elicited from the lips of Parkes regret for his "feeble opposition" to Wentworth on constitutional questions. The ashes of Wentworth were more eloquent than the voice of Parkes.

When the Parliament assembled again (Sept. 1873), the Vice-regal speech announced that no time would be "lost in again submitting the measure of last session to reconstruct the Legislative Council on a basis of popular election." The bill was introduced in the Council in compliance with Parliamentary usages, and was, by a majority of four to one, referred to a Select Committee. Before that Committee a strange chaos of discomfited humours and undefined aspirations was exhibited.

Witnesses were examined throughout several weeks. Mr. O'Shanassy, then a member of the Legislative Council in Melbourne, testified to the attacks made upon the Constitution in Victoria in 1865, when foreign matter was inserted

[15] Parkes was more bellicose. In his autobiography, published fn 1892, he said that the Council acted "in a spirit of insolence which could only be generated by the vicious principle of nomineeism."

in the Appropriation Bill with a design to deprive the colony of the deliberative functions of the Upper House in questions of policy. "Fortunately the Council had sufficient fortitude to resist, and the attempts failed." He would adhere to the elective system in Victoria, but was not so wedded to it as to think it applicable in all other places. In one point he was compelled to admit that he and other framers of the Constitution in Victoria erred when they deviated from Wentworth's bill, and prevented the Council from altering Money Bills. "If we had had power to deal with Money Bills I believe we would have had more success than we have had." [16]

Deas Thomson thought that, on the whole, the Sydney Council had worked well. He had been a member from the first, "excepting for the short period when I resigned, when there was an attempt made to swamp the House." Noting the facts—that, after trial of the elective system, Canadian statesmen had reverted to the nominative—and that deadlocks had resulted between two elective Houses in another colony, he apprehended that similar consequences would ensue in New South Wales from adopting the elective system.

Newspaper proprietors and editors were examined. All agreed that the Council had worked well, and confessed that when the Upper House had altered money bills the colony had been benefited. Yet one of them thought that as public opinion was favourable to the elective system it was desirable to adopt it, although probably the result might be the saddling of the colony with a House of which the members would be inferior in "legislative wisdom" to the existing one, which was "greatly in preponderance" in that respect over the existing Lower House. The editor of the *Empire* newspaper admitted that there had been "a deterioration in the elements of the Lower House gradually going on (after introduction of universal suffrage) up to the present time." Yet with this admission on his lips he advocated a single Chamber.

It was perhaps natural that such a blind leader of the blind should declare that "if there were no Upper House greater delay would take place," because the Lower "would

[16] See above, pp. 48 and *n.*, 61 and 62.

feel that a greater degree of responsibility rested upon them if, after they had passed an Act, there was no further opportunity for revision."

Dr. Lang "conceived that the great masses of the people are to a very great extent satisfied with the Legislative Council as at present constituted." His own opinion coincided with that of the great masses. The man who had a few years before denounced the "monstrous and shameless political villainy of Deas Thomson and Wentworth" in their political labours, and had averred that the nominative principle "vitiated the Legislature," now, in the presence of Deas Thomson, recanted his opinions, and, in reply to Sir W. Manning, said: "There is a very favourable opinion entertained by the public generally in regard to the Council as a legislative body."

A report was brought up, but was rejected by the Council. Mr. Docker carried resolutions demanding that the

"maximum and minimum number of members should be defined, and should never be less than two-thirds of the number of members of the Legislative Assembly, and that it should be imperative upon the Governor to fill up all vacancies as they occur, thus removing from the Executive of the day the power of impairing the efficiency of the Council, either by unduly adding to its numbers for the purpose of carrying some favoured policy, or by reducing it to inanition by refusing to keep up its numbers to an effective standard,"

and the question, on which there was no public excitement, ceased to occupy attention, socially or politically. Nevertheless, there has frequently been in the Assembly an under-current of discontent whenever the Council has interposed to correct errors or check extravagance. In a Stamp Bill, while Mr. John Hay was Speaker of the Assembly, the Council made amendments which were plainly wise. The Assembly resorted to the Parliamentary method of attaining the desired object without confession of error; laid aside the bill, introduced another, free from the defects of the first, passed it, and obtained the ready concurrence of the Council.

In 1880 Sir John Hay had long been President of the Council. A Stamp Bill was sent to the Council. It was so worded as to be retrospective. The government professed that they did not intend it to be so. The Council amended it in such a manner as to deprive it of retrospective opera-

tion. The Houses differed. The arguments of Messrs. Darley and Dalley in the Council outweighed those of the Assembly, but superiority in argument aggravates rather than soothes the passion of the worsted. There was the usual murmuring against the nominated Council; the usual prevalence of cultivated opinion that the Council was in the right; and the usual insinuation by Parkes that he could have framed a better constitution; but after the pendulum had swung from side to side for a brief period, its momentum was lost, and the gravitation of the common sense of the people ended the difference as before. The Assembly passed a new bill in the form which the ministry had declared that they had desired, but were loth to accept from the Council, and the bill became law. The popularity of the Assembly had not been increased by an attempt to enact a Privilege Law, which would have enabled them to bring undefined powers to bear against the public. The Council successfully contended for public freedom, and though willing to concur in granting powers required to maintain privileges within the walls of Parliament, would not launch them against private persons without those walls. To the extent to which public feeling was excited at all, it was in favour of the position of the Council.

The working of the elected Upper House in Victoria formed a singular contrast to that of the nominated House in New South Wales. If the most experienced men in Victoria had pressed forward and secured seats in the Council, the fortunes of the colony morally and politically might have escaped hazards to which they have been exposed. But some who were presumptively fit were not willing to undertake public duties. Notably in some provinces the fittest men were not preferred to the incompetent. Dr. Palmer, the Speaker of the old Council, was fourth on the poll, yielding place to a man utterly worthless as a legislator, but put forward by Mr. O'Shanassy, whose object was to procure a follower rather than select a senator. There was sufficient prudence amongst the elected to ensure the unanimous choice of Dr. (afterwards Sir) James Palmer as President of the new Council.

Mr. O'Shanassy agitated for manhood suffrage before the two Houses, constituted under the bill which he assisted to

frame, had been called into existence. Mr. Charles G. Duffy, then a humble henchman to O'Shanassy, laboured in the same direction. The first practical blunder made by the Council itself was in not insisting on compliance with the spirit of the Constitution, and in all cases compelling ministries to place in the Upper Chamber at least one responsible minister whose re-election by his constituents would ensure the ratification by an electorate for the Council of the formation of the ministry. Such ratification was demanded by the Constitution as much in one House as in the other. The point was not absolutely forgotten, but members did not appreciate its importance. In May 1857 they resolved that they could have "no confidence in any government that is not represented by one or more responsible minister or ministers in this branch of the Legislature." If they had acted upon that resolution in all cases they might have averted confusion. They would have ensured respect for the Constitution in the formation of a ministry, and some circumspection in forming it; they would have been warned of the opinion of one of their own electorates; and they would have been compelled to respect that opinion. But they yielded to a moral laxity, or political blindness, which they mistook for an unwillingness to obstruct. They allowed their early resolution to slumber. Occasionally it was alluded to; mild menace was employed about refurbishing it, but it hung like "rusty mail in monumental mockery" upon their walls. In 1856, 1857, 1858, 1859, 1860, 1868, 1869, 1871, 1875, ministries were formed without a responsible minister in the Council. To go through the form of presenting papers by command, some member, under the plea of good nature, consented to associate himself with the ministry "without office," and thus escaped an appeal to his constituents. Men of all parties sinned equally. Haines, O'Shanassy, Nicholson, Heales, McCulloch, Macpherson, Duffy, Berry, were among them. Haines, O'Shanassy, McCulloch, Francis, Kerferd, Service, and Berry at other periods obeyed the Constitution when it suited them to do so. How hollow was the allegiance shown may be inferred from the fact that when in 1878 Mr. Cuthbert, the responsible minister in the

Council, resigned office rather than request the Council to immolate itself by what the ministry called a Reform Bill, no other minister was appointed. The head of the ministry, Berry, and his remaining colleagues divided Mr. Cuthbert's salary amongst themselves,[17] and interceded with their recent colleague to carry their messages to the Council as an act of commiseration. The Council could not maintain due weight in public affairs while receiving as a favour what was the right, not of the Chamber only, but of the country. Moreover, the relations between the Houses suffered change by means of alterations of the Constitution.

To procure popularity, Mr. Duffy early devoted himself to the degradation of the Assembly, rightly deeming that it would then serve his own purposes better. He had been presented with property to qualify him to sit in the Assembly. One of his first acts was to introduce a bill to abolish the property qualification[18] required by members. Another rent in the Constitution was caused in the same manner. O'Shanassy, Duffy, and others deemed the advocacy of ochlocracy the speediest way to power; and the community was prone to new things. Nevertheless it cannot be said that the Assembly, elected under the new Constitution, was desirous, as a body, to take the control of taxation from those who paid taxes, and to subject the industrious, who bore the burdens of the State, to the idle or unthrifty, who contributed nothing to its support. Everybody believed that the object of government ought to be the greatest good of the greatest number, but few then argued that such good could be attained by vesting ignorance with supreme control, and still fewer declared that, if

[17] Excepting sixpence, which it was said their financial genius was incapable of dividing into eight portions. An Opposition member thought such a reason too sarcastic, and suggested that when the last coin was produced each minister exclaimed to his colleagues, in the words of Canning's "Friend of the People"—"I give thee sixpence? I will see thee —— first!"

[18] It is sometimes argued that a property qualification affords no guarantee, and furnishes no check. Whatever may have been the case in England, the requirement was effective in the colonies. Even Dr. Lang feared to make the necessary declaration lest the property affirmed to be unencumbered should be attached by his creditors.

the majority desired what was evil, it was good for them to obtain it.

At the first elections under the new Constitution (1856) the country members were numerous enough to hold in check the partisans of O'Shanassy, even when combined with turbulent representatives of the goldfields. But the hearts of some of the ministry failed. Captain Pasley in his canvass declared that the Constitution ought to be tried before being mutilated, but his example was not followed. A junto in the ministry resolved to foil O'Shanassy by a popular counter-proposition. The opening speech of the Acting-Governor informed the Houses that they would be "asked to extend the basis of the suffrage," but not "during the present session to make alterations in the main features of the Constitution." The measure brought in to fulfil this pledge gave the suffrage to "every male person of the full age of twenty-one years." Members who usually supported the government were entreated to assist them on the ground that, if O'Shanassy should defeat them, he would propose something worse—the government proposal being in such conferences admitted to be bad. Only the ability and reputation of Mr. Stawell prevented those, whose votes were thus solicited, from refusing to support a measure privately admitted to be bad, while publicly proposed by the ministry. Through his energy the ministry escaped defeat for a time, but when he became Chief Justice in 1857 the end was near. In a few days O'Shanassy was called to the helm. He took, as one of his colleagues, Mr. Foster, who, as Colonial Secretary in 1854, was howled out of office for doings which O'Shanassy had denounced. Duffy also was made a minister, and his appointment in those days shocked the public sense. The ministry died in less than two months, and Mr. Haines returned to office with colleagues committed for the most part to the proposed revolution in the franchise. His bill to accomplish it became law in November 1857. Any man might vote for a candidate for a seat in the Assembly, and any man might be a candidate. *Occupet extremum scabies* became a meaningless phrase in Victoria. No man was to be deemed inferior, or behind another. To make the principle clear to the public, a

provision in the Constitution Act[19] was abrogated, because it aimed at securing a minimum of intelligence so far as education could guarantee it in the voter. By the new law, every one unable to read and write was ranked with the most learned in choosing legislators.

In 1858, O'Shanassy was again in office, and again Duffy was his colleague. In the Council Mr. Henry Miller represented the government. In that year further divergence between the constitution of the two Houses was created. The original numbers of members were thirty in the Council, and sixty in the Assembly. Without proportionate augmentation of the Council, eighteen members were added to the Assembly. Nor was this all. A bill to shorten the duration of Parliaments was sent from the Assembly; and though the Constitution required an absolute majority to sanction such a change, the Council, without dissent, passed the Bill through all its stages in two days. In process of time eight additional members were added to the Assembly, but in 1879 none had been added to the Council.

It is right to mention an attempt to corrupt the rolls for the electoral provinces of the Legislative Council. The Constitution Act, which established the property qualification (freehold of the clear value of £1000, or of clear annual value of £100), did not provide machinery for excluding fraudulent claims. Many districts had then no local municipal representation, and therefore no ratepayers' rolls could be availed of in ascertaining whether a claimant of a vote was entitled to it by the value of his property. Members of a political "Convention," formed in Melbourne, in 1857, to promote what were styled "liberal principles," determined, in 1858, to overwhelm the lawful voters by fraudulently adding to the rolls hundreds of names of unqualified persons. The active agent in the fraud extracted from the existing roll of electors for the Assembly the names of all freeholders who would, in his opinion, support his political views. Not one of them possessed the legal qualification. For the province he thus put forward

[19] Clause xii. ". . . Provided, lastly, that no person who shall attain the age of twenty-one years after the expiration of two years from the passing hereof shall be entitled to be registered unless he shall be able to read and write."

more than 1400 claims. The chairman of the revising magistrates, convinced that the proceeding "was an audacious fraud" intended "to stuff the roll of the district,"[20] joined in striking off the names fraudulently placed on the lists. A Select Committee was appointed by the Legislative Council to report on the subject. It suggested methods for preventing similar frauds, but no complete check was applied until 1868. In the mean time, though no wholesale fraud like that of 1858 was attempted, many claims were based upon property which neither by clear nor by annual value entitled the claimant to a vote. In 1868 municipal institutions had spread throughout the territory. Ratepayers' rolls existed. Mr. (afterwards Sir) Charles Sladen, a member of the Council, succeeded in carrying a bill which, while it reduced the suffrage from £100 to £50 of annual value, established the principle that in all cases the test of value should be the ratepayers' roll. He thus both enlarged and purified the electoral body. Honourable men who, owning property worth more than £50 and less than £100 a-year, had not claimed votes were enrolled. Unscrupulous claimants who had secured votes, though not possessed of property worth £30 a-year, were purged from the rolls. The reform was far more substantial than the public knew at the time. It raised the roll throughout the colony from about 11,000 to 28,000, and eliminated a large number of unqualified persons. Before this wholesome change was effected the relations between the two Houses were to be strained to the uttermost by the unconstitutional acts of a ministry supported by the Assembly in a manner now to be told.

The question of Money Bills, raised in later days, caused no inconvenience during the Parliament convened in 1856. The Constitution Act enabled "the Legislature" to define its privileges under a restriction that they should not "exceed those now (1855) held, enjoyed, and exercised by the Commons House of Parliament or the members thereof." Each House was specially empowered to adopt standing orders, which when approved by the Governor were to be

[20] Evidence of Chairman, Q. 818. Legislative Council Proceedings, Victoria. 1858-9. Report of Select Committee on South Province Electoral Rolls.

binding, but no standing order which affected the proceedings of the Chambers collectively was to be "of any force" unless adopted by both bodies. The Council was in express words empowered by the Constitution to reject but not to alter "all bills for appropriating any part of the revenue, and for imposing any duty, rate, tax, rent, return, or impost."

The two Houses agreed upon certain joint Standing Orders for the conduct of inter-cameral business, amendments in bills, their presentation for Royal Assent, &c. All but the Appropriation Bill were to be presented by the Clerk of the Parliaments. Members who had assisted in passing the Constitution Bill were on the Standing Orders Committees which framed the separate and the joint Orders for both Houses, and were aware that the only restriction imposed upon the Council was with regard to initiation and alteration of certain bills. But power inflates its possessors. There were occasional symptoms that the Assembly desired to encroach upon the position assigned by the Constitution to the Council, but no serious differences occurred until 1865. The Council in the interim rejected several bills to abolish State-aid to religion and to pay members of Parliament. Many bills incidentally involving taxation were amended by the Council. The amendments were sometimes wholly, sometimes partially, agreed to, and occasionally were not agreed to by the Assembly. On one occasion (Feb. 1859) the Council was so ill-advised as to alter an Appropriation Bill. The alterations were in themselves trivial, but they violated the letter of the Constitution and they were promptly waived. In dealing with Land Bills it was not denied that the Constitution Act vested the control of Crown lands "in the Legislature" in such a manner as to leave each House unfettered. Copying Wentworth's words, the Victorian Constitution provided that all royalties, mines, and minerals should similarly be vested.

Although the franchise for electors to the Council remained for many years as originally fixed (£100 annual value of freehold being the property qualification) there were symptoms that the opinions of the voters tended to assimilate to those of electorates of the Assembly. Mr. T.

Herbert Power, a highly-esteemed member for the South Province, Dr. Hope of similar repute in the South-western, were discarded at the periodic elections in 1864, and inferior men, holding popular opinions on the land question, were preferred. A prudent ministry might have availed itself of the working of public opinion within the lines of the Constitution. The elections of 1864 afforded encouragement to such a ministry while they gave warning to the Council. But neither prudence nor patriotism guided Mr. McCulloch, the head of the ministry. Mr. G. Higinbotham, a theoretical enthusiast, steeped in a mixture of the ideas of John Stuart Mill and of the French iconoclasts of 1789, was Attorney-General. His personal character was so much respected that the Cascas of Victoria sheltered themselves under his name, believing that what would appear offence in them, "his countenance, like richest alchymy, would change to virtue and to worthiness." Mr. Michie was Minister of Justice. He, like Mr. Higinbotham, was a pronounced free-trader. So also was Mr. McCulloch. Mr. Verdon, the Treasurer, had been a ship-chandler at Williamstown, had busied himself with municipal affairs, had become popular, and had entered Parliament. He had been Treasurer in a former ministry expelled for its misdeeds, but he allied himself in 1863 with some who had expelled it. Mr. J. M. Grant, notable at turbulent meetings in Melbourne in 1854, was Minister of Lands in 1864. Mr. J. G. Francis was Commissioner of Trade and Customs. Because he had been successful as a merchant it was presumed that he was sagacious. When he spoke he disappointed his admirers. He floundered amongst words of which, if he knew the meaning, it was manifest that his ideas were confused. Yet he was to furnish the occasion for what was known as the first "deadlock in Victoria."

Bastiat has shown how things which are seen operate upon the ignorant, and how more numerous and weighty unseen conditions escape attention. This truth was to be confirmed in Victoria. Free-trade and protection are banners under which there is no immorality in enlisting, although it may be foolish to reject material advantages. It was absurd to deny to a gold-producing community free power to exchange its gold for products of

other lands. But it was a blunder which was not crime. The strife in Victoria was conducted as if it had been the latter. The dwellers in Geelong had ever held a front rank among those who deemed protection of local manufactures the passport to man's highest good. If a shoemaker could prevent the importation of shoes, or by a sufficient Customs duty be enabled to demand an arbitrary price for his labour, the shoemaker would be happy and good. Other artisans applied the principle to their own handiwork.[21] Where artisans congregated, the principle found votaries. Each sought to enhance the profit on a certain article. The unseen things—that prices of other articles would be enhanced—were not considered, although the point and grace of Bastiat had been bestowed on them. Men are passionate rather than logical. When in the ferment of opinions the demand for protection began to spread, the confusion in the mind of Mr. Francis found vent in a proposal to revise the tariff with a view to protection. The fumes from the nether regions intoxicated him. The inspiration which he drew from obfuscated depths he delivered from his tripod at the Custom-house—the temple in which he officiated—and, like some ancient Pythians, he was obscure in his deliverances. But there was no doubt that the smoke in the Victorian Delphos came from caverns where there was fire. Mr. McCulloch, at a general election held in 1864, scattered incense upon it. His professions as a free-trader deterred him from openly advocating protection, but he hinted at a "revision of the tariff." The chasm evolved more fumes than before, and emitted an Assembly more prone to protection than McCulloch had expected.

[21] One of the most amusing instances of blundering afforded by travelling-bag authors, who visit a country for a few weeks, was shown in Sir C. Dilke's work, "Greater Britain." He probably met some enthusiast who entangled him. He extolled the patriotism of artisans in Victoria in advocating protection, because, as it was clearly injurious to themselves, they could only be actuated by a self-sacrificing devotion to the supposed good of posterity. [1896. On the author's pointing out to Charles Dickens the absurdity of Dilke's statement, Dickens replied (1870): "Your friend Sir Charles Dilke is setting the world right, generally all round (including the flattened ends, the two poles) and as a minister said to me the other day, 'has the one little fault of omniscience.'"]

The Governor (Sir C. Darling) pronounced the oracle to the Houses (Nov. 1864). "Your early attention will be called to a measure having for its purpose the readjustment of the tariff." There would also be a measure dealing with the constitution of the Council in order to bring it "more into harmony with the Constitution and with public opinion." The second reading of the bill to amend the Constitution was moved in the Council in January 1865, fourteen members voting for it, and the same number against it.

Though the President voted with its supporters, he declared that as it had not received the concurrence of an absolute majority of the whole Council, the bill was lost. Foiled thus in the Council, the ministry conceived the idea of coercing it. Their supporters in the Assembly were heterogeneous. The Attorney-General, Higinbotham, had publicly declared that he would leave any ministry which would propose a measure savouring of protection; but without support from advocates of protection, and members from the goldfields, the ministry could not hope for a significant majority in the Assembly. Before the Houses met in November, Sir C. Darling told the Secretary of State that popular opinion, as shown by the general election, was favourable to what is designated "Protection to native industry by means of levying import duties." Members for the goldfields clamoured for abolition of the export duty on gold. The abolished license fee had been the object of hatred when levied on the individual miner. The export duty was grumbled at as all taxes are grumbled at. But the extraction of gold, once due to individual energy, had in 1865 become the work of companies. Members for the goldfields were generally shareholders, and were intimate with promoters of companies. The government proposed to diminish, but not to abolish, the export duty. The Assembly outran its guides, and resolved that the duty ought to expire at the end of 1866. It was presumed that the Legislative Council was hostile to abandoning free-trade, and to throwing away the royalty on gold.

Mr. McCulloch resolved to bribe protectionists and enemies of the gold duty by tacking his measures to the Appropriation Bill; and thus to coerce the Council to pass

the composite bill, or to furnish him with a popular cry, which might annihilate their influence. This infraction of the Constitution and of Parliamentary usage was not proposed until the government conceived that they could not satiate their goldfields supporters except by a violent course. After the rejection of the measure to alter the Constitution the Houses were busy with numerous Consolidation Bills, and (after discussion and conference) an amending Land Bill was passed in March. On 15th February the Assembly passed resolutions reducing certain duties and imposing others, and ordered that a bill should be thereupon brought in. On the same day a Custom and Excise Bill was introduced, but no copy of it was supplied on the first reading, although the second reading was made an Order for the ensuing day.

It may be surmised that some ministers shrank from the act they were about to commit. Their conduct betokened doubt or fear. Instead of protecting the revenue in the customary manner by receiving cash for the new rates of Customs duties, Mr. Francis accepted bonds. The bill ordered to be brought in to carry out the tariff resolutions of the House was not produced. While men were wondering at the delay, the ministry were plotting at once to overbear the Council, and to outwit the members for the goldfields, who had persuaded the Assembly to abolish the gold duty. The Tariff Bill did not appear, but the promised Customs and Excise Bill appeared with more than 500 clauses; and tacked to it, in a brief schedule, were the resolutions concerning the tariff, which were not framed in compliance with the demand for the total abolition of the gold export duty. It was to remain at 1s. an ounce. For a time the government again hesitated, but, on the 2nd March, without attempting to proceed with the Customs Bill, McCulloch announced that, after the most earnest consideration, it had been resolved to include the ways and means in the Appropriation Bill, and to throw the responsibility on the Legislative Council of rejecting the Appropriation Bill.

Exception was taken to such a breach of constitutional usage, but Messrs. Michie and Higinbotham contended that the tack was in strict conformity with Lord Palmerston's

example in 1861.[22] Lord Palmerston tacked nothing to the Appropriation Bill, even when the Upper House had rejected one of his measures. McCulloch tacked two incongruous measures to the Appropriation Bill before the Council had been asked for an opinion upon them. The Speaker of the Assembly, Sir F. Murphy, made no sign of condemnation. Mr. O'Shanassy raised his voice against the proposed scandal, but was not regarded. By 46 votes against 23, the ministry carried their point, and the Speaker left the chair.

On the 23rd March, in reply to a question, the Council were informed that the government intended to "introduce the new tariff clauses into the annual Appropriation Bill." On the 28th Mr. Sladen obtained a Committee of the Council to search for precedents on "the subject of the tacking of bills," and on Tax and Appropriation Bills. On the 4th May the Council received the report, and on the 16th resolved, without a division, to insist on the Imperial Parliamentary practice and usage with regard to matters which might be included in one bill; that clauses of Appropriation could not conformably with that usage be introduced into Bills of Aid or Supply; and that clauses of Aid or Supply, in like manner, were barred from an Appropriation Bill. Though they would not venture upon a division in the Council, the ministry pursued their course in the Assembly. On the 14th July the Treasurer (Verdon) was ordered to bring in the bill. Meanwhile the Customs Duties Laws Amendment Bill was set down for a second reading. In it were inserted the tariff clauses. On the 18th July the Cabinet shuffled their cards afresh. Mr. Verdon on that day moved the second reading of a Customs Bill differing entirely from the one already seen. He had

[22] The Lords rejected the Paper Duties Bill, 21st May 1860. The Commons passed resolutions affirming their own powers, July 1860. The Appropriation Bill—without any tack—went to the Lords, 23rd August 1860. It is melancholy to find educated men asserting and inducing the unlearned to believe that Mr. McCulloch imitated Lord Palmerston. What really was done in England was to submit to the loss of the Paper Duties Bill in 1860, and in 1861 to include the repeal of the Paper Duties Bill in a general Customs and Inland Revenue Bill, in a manner which Lord Derby admitted was "fairly within the competence" of the Commons. The Lords had the power to divide the bills if they pleased, he added.

"recast" it.[23] The 543 clauses of the Customs and Excise Bill had dwindled to composite clauses nineteen in number. The total abolition of the gold export duty was conceded in the new bill (from 31st Dec. 1866). Appropriation, Supply, and Droits of the Crown were inextricably mixed. The result was that the order of the House, that a distinct bill should embody the tariff resolutions, had never been obeyed; that they had been inserted in a schedule to a bill separately ordered; that the irregular bill was abandoned; and a mongrel changeling, still more irregular, was put forward in its place.

Mr. Verdon referred slightly to the objections to tacks, but said: "It had never been necessary to take such a course either here or elsewhere. . . . If even it became necessary to create a new practice, it was open to the House to do so." His learned colleagues would explain that no violent departure from precedent was involved in what he proposed. Mr. Verdon could hardly believe in what he said, and no one believed in him. All eyes were turned on the Speaker. If he were to allow the mongrel bill to be read a second time, without a warning from the chair, he would proclaim his ignorance of Parliamentary practice, or his want of resolution to enforce it. To enforce it would give unpardonable offence to the ministry. He took a middle course. He showed that the bill was not the bill ordered (on the 13th) to be brought in, and that therefore, as it had not been read a first time, it was not regularly before the House. Doubtless a Speaker of the House of Commons (1841) had condemned the inclusion of appropriation clauses in a bill to which they did not belong, but what then? There was only a Standing Order in the way. He shut his eyes to the fact that the Constitution Act bound the House to the English usage, until, in accordance with law, other usage might be adopted. One of the extant Orders in force bound the Assembly to follow the practice of the House of Commons. The pliant Speaker said that if the House would suspend that Order

[23] The title was "a bill for granting to Her Majesty certain duties of Customs, and for altering certain other duties, and for applying a sum out of the consolidated revenue . . . and for appropriating the supplies . . . and for other purposes."

he could put the question for the second reading of the Bill. He was not ignorant that if the Order were out of the way, or if it had never existed, the House would remain bound by the Constitution Act, and that no Standing Order affecting the mutual proceedings of the Houses could be effectual, unless adopted and approved by both and sanctioned by the Governor. But his flattery of the House did not appease the ministry. The Attorney-General rebuked him for not speaking sooner. He sneered at the English Speaker of 1841. He (Higinbotham) "sincerely believed that the present measure was no violation of the rule (against tacks); but he was prepared to say that if it was a direct violation of it, the House would be justified under present circumstances in departing from it." The smitten Speaker writhed in his chair, and explained that "if the House was of opinion that this was the same Bill to which the order (for bringing in the Bill) applied, he had no further objection to offer; but if on the other hand the House thought it was not identical with the Bill introduced, he could not put the question for the second reading to the House according to the Standing Orders." After a brief adjournment, however, he qualified his ruling, and said that the House had only to read the Appropriation Bill a second time, to read the Customs Bill a second time, and then to refer the Bills to the same Committee, with an instruction to join them together. All knew that he had already affirmed that one of the Bills had not been read a first time. Amid cries of "Where is the Bill?" the Treasurer carried the second reading of a Customs Bill, to which he gave the title, "Supply and Appropriation."

At six o'clock on the 18th July, the Speaker would not allow the Appropriation Bill to be read a second time, because the tariff was attached to it. At eight o'clock on the same evening he would not allow a member to discuss the tariff items as they appeared in the Bill before the House. By 38 votes against 19 the instruction to unite the Bills was carried. In Committee Mr. Francis admitted that the procedure of the ministry "might be despotic, but he believed in a wholesome despotism." The Speaker essayed again to modify the course proposed. He did not deny any rights of the House, but it was "contrary to the

practice and usage of Parliament to attach revenue clauses to appropriation clauses." Mr. McCulloch coarsely rebuked him. "The time had gone by for the Speaker to take such an objection. He regretted to find the Speaker not supporting the rights of the House, and he did not shrink from stating as much." In spite of the argumentative triumphs of Mr. Gillies and Mr. O'Shanassy on the opposition bench, the third reading of the composite bill was carried by 41 votes against 16.

After the conjunction of the two bills they received in the proceedings for which the Speaker was responsible the brief title—"Supply and Appropriation of Revenue Bill 1865." "Amidst much laughter" (the reporters said) the bill was ordered to be sent to the Council. At this period the responsible minister in the Council succumbed to commercial pressure, and forfeited his seat in Parliament. The government did not attempt to replace him. They fell back on the evil practice more than once tolerated before, and persuaded a member to carry messages and formally move bills in the Council. When their mongrel measure reached the Council the President thought it right to make the brief title more truthful, and on the business paper it appeared as a "Customs Import Duties, Gold Export Duty Act Amendment, Appropriation Bill." Read a first time on the 21st it was set down for a second reading on the 25th. On that day the President, Sir J. Palmer, called attention to the clause in the Constitution which made "the rules, forms, and usages of the Imperial Parliament binding on the Colonial Legislature in the absence of any joint Standing Order to the contrary." The bill sinned against those rules. "If such an irregular proceeding were permitted to mature into a settled usage, the veto of this House on this whole class of bills would be abolished, although the power of rejection of such bills was conveyed in language as clear and unambiguous as that which conveyed to the Assembly the power of originating bills of taxation and supply." Asked whether the Council could divide the bill and deal with its portions separately, the President ruled that it was precluded by the Constitution Act from doing so. Thereupon Mr. Fellows moved:—

"That as by the 34th section of the Constitution Act the rules, forms,

and usages of the Imperial Parliament are required to be followed, so far as the same may be applicable to the proceedings of the Legislative Council and Legislative Assembly respectively, until altered by some standing rule or order to be adopted by both the said Council and Assembly; and as it is contrary to those rules, forms, and usages, which have not been so altered, that any clause of Appropriation should be introduced into a Bill of Supply; and as this Bill of Supply contains a clause appropriating the supplies granted during the present session of Parliament to the service of the years 1864 and 1865, and moreover regulates the disposal of minerals in the waste lands of the Crown (over which this House claims to exercise equal power with the Legislative Assembly), and therefore encroaches upon the just privileges of this House, the subject matters of this bill be not considered until they are dealt with in separate measures, and that this bill be laid aside."

By twenty votes against five the amendment was adopted. The questions of protection and free-trade were not involved in the amendment, but they were not disjoined from the bill in the public mind. Petitions had implored the Council not to pass the tariff. To one petition there were 24,000 signatures. But the ministry relied upon finding many more than that number of fiery protectionists among artisans in the towns, and miners at the goldfields. The ignorant were with them, and were powerful. They resolved to set class against class rather than abandon their bill. Their logical difficulties were great. Mr. Michie had formally denounced protection as robbery by Act of Parliament. Mr. Higinbotham had vowed that he would shake the dust off his feet and quit a ministry which would sink into such an abyss of folly as to desert any principle of free-trade. Yet both of them supported the bill. It was on the gregarious impulse that M'Culloch relied. If it had enslaved Michie and Higinbotham, what might it not do with the crowd? The first step taken by the ministry aimed at making retreat impossible. Two days after the loss of the mongrel bill M'Culloch moved resolutions, three of which he untruly declared to be the "very resolutions submitted to the House of Commons" in 1860 by Lord Palmerston. Lord Palmerston's second resolution admitted that the Lords had exercised their power to reject bills. M'Culloch eliminated that admission. Lord Palmerston had not included the question of appropriation. M'Culloch dragged it in. The fourth resolution was all his own, and scarcely one word of it was correct. It averred that the bill laid aside was "framed in

accordance with the rules, forms, and usages of the Imperial Parliament," and that the Legislative Council had disregarded the rights of the Assembly; and it pledged the latter body to entertain no "further or other bill for the appropriation of supplies" for 1865, until the tariff approved by the Assembly should be adopted by the Council. Thus the quarrel was made to hinge on the question of protection. The resolutions (previously agreed to at a meeting of M'Culloch's supporters) were carried in the House without a division.

On the 28th July, the Treasurer notified in the Government *Gazette* that payments of salaries, wages, &c., would be suspended "until the necessary authority" could be obtained. Liabilities for July remained unsatisfied throughout August. It was rumoured that the convicts in the gaols would soon be let loose upon society in order to terrify the Council. There was an Act for enforcement of claims against the Crown. When the tacked bills were thrown out persons who had paid the new duties (exacted in anticipation of the passing of the tariff) sought to recover their payments. The Attorney-General (Higinbotham), in acknowledging service of a petition, warned the petitioner that the government would resist to the uttermost "this attempt to recover moneys legally paid under the established sanction of the Legislative Assembly, and that the Act of Parliament intended to be passed to give legal form to the resolutions will be retrospective in its operation, and will subject all persons, who endeavour by legal means to defraud the revenue, to the cost of their litigation." This promise of persecution, which might reach any man's home, excited alarm. If the man who boasted that if the "tack" were in direct violation of law and usage, it should nevertheless be adopted, would accuse of fraud those who might resort to a legal tribunal to test their rights, it seemed that life and property might be unsafe if Mr. Higinbotham could have his way. The law pronounced against the validity of the duties, but the government continued to collect them. After the loss of the tacked bills a conference was held between the two Houses which involved discussion of the points of difference about their powers. A bill authorizing construction of waterworks was amended in the Council,

and returned to the Assembly early in July. The Assembly returned the bill (26th July) with a message disagreeing with certain amendments as interfering with their privileges. The Council defended their amendments by reasons based on the Constitution Act. At the same time they appointed six members to confer with a like number of the Assembly, and requested the Assembly to reciprocate. The bill was much desired, and the ministry (8th Aug.) consented to the conference. Five meetings were held. The Waterworks Bill was on the table. The tacked bills were in the minds of the members. Mr. Michie put the Constitution aside and declared that the authority to reject bills, expressly enacted "in the Constitution Act, must be read with this limitation, that the Council can legally but not constitutionally reject, for as they cannot be seized of the thing at all to give their assent without their having the power of rejecting, appropriate language has been used under these circumstances." If the Council could reject a Money Bill, though it could not initiate one, successive rejections would "at last bring round to the Council the power of originating" such bills. He asked for an answer to this argument. A member replied: "The only answer I have to give is this: if two men are travelling, and one wishes to go in a northerly direction and the other declines to do so, according to this argument the declining to go northwards is positively initiating a journey in another direction." After much speaking, a *modus vivendi* was found with regard to the bill, but none with regard to the principles discussed. It was reported to the Council (22nd Aug.) that "neither Committee had succeeded in convincing the other," but that both Committees had agreed to recommend certain amendments. To procure them, the Council was asked to agree to certain amendments desired by the Assembly and to insist on others. The Council conformed. The bill when returned to the Assembly was laid aside. A new bill, framed to meet the view of the conference, was introduced, and was passed in October. While this collateral struggle was conducted, the Governor, Sir C. Darling, reported the state of affairs to the Secretary of State. A motion was carried in the Assembly (by 40 against 16) informing him that the tacked bills had been

laid aside "without message or communication to the Assembly," and praying him to adopt such measures as might "in the opinion of his responsible advisers be expedient or necessary" to satisfy public creditors. He had told his advisers that he would "adopt no step which is not strictly authorized by law." He would endeavour "to mediate between the contending parties." (In due time the Secretary of State approved of the "intention to adopt no step which is not strictly authorized by law.") On the 29th August the ministry essayed to effect their object through the Governor's mediation. In reply to the address of the Assembly he said that he could not sanction the issue of money unless the amount required were "legally available by an Act duly concurred in and passed by the three branches of the Legislature," and (affecting that the tacked bills were still under consideration) he hoped that both Houses would restore intercourse on the subject "by conference or otherwise." To the Council he communicated copies of the address and of his reply; entreated them to display "an enlightened regard for the interests of the community;" and hoped that "active legislation with regard to the finance of the colony" would be "promptly resumed." They thanked him for his assurance that he would carry out the law, but hoped that he would not "become a party to any arrangement, by whomsoever proposed, which, though it may not violate the letter of any positive enactment, is opposed to its spirit and obvious intention." Their address was long. They were "desirous to agree to a bill for appropriating the supplies in the usual and accustomed manner;" their reasons for laying aside the composite bill were recorded, but it was not in accordance with Parliamentary practice for either House when thus disposing of a bill to send a message to the other on the subject. Having vowed to carry their tacked bills, the ministry used the Governor's authority in again averring (5th Sep.) that the lost bill was still "in possession of the Council." How the ministry beguiled the Governor, was proved by the fact that on the same day on which he informed the Houses that he would strictly abide by the law, negotiations for evading it were commenced by the Treasurer, who asked various banks to open cash credits on

the authority of the Governor-in-Council. Only one bank consented to co-operate. The only local director of it was Mr. McCulloch, the head of the ministry. He was able to work in two camps. Five banks, because they could not legally aid him, declined to do so. The one which consented stipulated that the amounts advanced should be duly certified by the Audit Commissioners, and that the course proposed should be authorized by the Governor in Council. While he had before him letters from five bankers asking for further information to enable them to deal with what one of them called his "novel" request, the Treasurer obtained the Governor's consent (1st Sep.) to an Order-in-Council authorizing him to make arrangements for payments by means of a cash credit.

On the 5th September the Governor, by another Order-in-Council, authorized Verdon, the Treasurer, to borrow the sums required, and on the 6th that functionary did, under seal, "promise to pay to the" accommodating bank "all sums of money so lent as aforesaid." But neither he nor the bank deemed his promise valuable. They conspired to give a show of lawfulness to their acts. The bank sued the government (7th Sep.) for £40,000, and the Attorney-General by arrangement confessed judgment. The Treasurer, on that day, sent a clerk with a warrant to be countersigned forthwith by the Audit Commissioners. It contained £6 14s. 4d. added for costs. On the 8th September they deemed themselves justified in signing, on the ground that the Supreme Court judgment made the money legally available, but they guarded themselves by limiting their certificate to the payment to the bank, and not to the payments made by the bank.

On the 11th September they arrived at the conclusion that the Treasurer, being "a person in the public service," into whose "control" the borrowed money had passed, was bound under certain penalties (in Mr. Ebden's Audit Act) to pay it to a "public account," and deal with it in a certain manner. The Treasurer consulted his friends, and in ten days Mr. Higinbotham decided that the Treasurer was not "a person" to whose "possession or control the money lent" had passed within the meaning of the Audit Act. "It was not money legally payable to the Treasurer." It

was money which the bank might have refused to "lend, and which the Treasurer was under no obligation legally, or in the terms of the contract with the bank, to receive."

While these events occurred, men wondered at the audacity with which the Governor was asked to defy the law. When the explanation of them was afterwards published, their wonder was transferred to the slippery subterfuges with which, step by step, the Governor was urged forward and assured that all he did was legal. The operation was repetending. Mr. Verdon was to obtain a loan, the bank to file a petition against the Queen to recover the sum, Mr. Higinbotham to confess the debt, the case to be thus kept from trial, judgment to be entered by the prothonotary, the Governor to issue a warrant for payment of the debt and costs (although no defence had been set up), and the ministry, composed of free-traders (excepting Mr. Francis), was to rely on the voices of protectionists in overbearing resistance to an evasion of law carried on in the name of law by perversion of law.[24]

At this juncture the vacancy created by the retirement of the responsible minister in the Council afforded an opportunity to test an electorate in the Eastern Province. A ministerial candidate was ignominiously defeated by Mr. Haines, who, after a visit to Europe, had returned to lament the mischief to which he and his colleagues had contributed. When the Governor, by advice, told the Council (5th Sept.) that the lost bills were in their possession, he added, that "without violating the letter or the spirit of the law he had (by advice) succeeded in making temporary and provisional arrangements" for defraying public expenditure.

[21] This and cognate passages excited wrath in one reviewer of the first edition of this work, Mr. David Blair, who made himself conspicuous in the disorders in Melbourne in 1854. Wild language in a review proves little more than that the reviewer is out of temper. Loss of temper causes incoherency in the reviewer and amusement of the reviewed. There are two sentences in Mr. Blair's article (*Victorian Review*, vol. ix.) which might be gratifying to an author desirous of Mr. Blair's commendation —"Generally speaking the present writer has no reason to object to what is said of him in these pages," and "The reader cannot lay his hand on a particular statement or assertion and say 'this is absolutely untrue'; but . . . ." The last phrase is applied by the reviewer to the episode of the "confessed judgments," the facts of which, as narrated above, seem to command the reviewer's assent, though the author's deductions are not commended.

On the 18th September he signed a despatch defending his conduct. The signature was probably all that he contributed. He was saturated with the views of others. Though the tack was resorted to without submitting the tariff in a proper bill, "it seems probable (he said) that in this case it was the (Council's) intention to reject the tariff, as apprehended by the Assembly." On the claim of the Council to equal power over minerals derived from Crown Lands, he "saw clearly that it was impossible for the Assembly to make any advance towards an accommodation of the existing disagreement."[25] He insinuated that, "under the banner of what is here called free-trade," certain interested importers were selfishly hostile to certain duties. On the 20th September the Council resolved to address the Queen; to set forth the events of the session, to pray her to graciously consider them, and "to adopt such measures as may seem fit for maintaining in this colony the Constitution as by law established."[26]

The memorial of the events of the session and of the arrangements for emptying the Treasury was adopted in the Council (21st Sept.) by 17 votes against 4. Although the mail steamer was to depart on the 26th September, the Governor delayed the transmission of the petition till October. He wished to convey with it his comments. But on the 22nd September in a despatch to the Secretary of State, he described the arrangement with the bank as one "of a very simple nature," and filled many pages with its justification. His advisers would "justify themselves to the Assembly." He enclosed a written opinion of Mr. Higinbotham and Mr. Michie, that "Her Majesty's local government has legally the power to enter into contracts . . .

[25] Mr. Michie had in February declared that the gold export duty was "a rent or royalty, distinguished from any tax from which no immediate advantage is gained."

[26] Counter-petitions sent by ministerialists entreated Her Majesty to "disallow the prayer of the memorial forwarded by the Legislative Council, approve the action taken by your representative, and support the Ministry and the Assembly." The Governor reported that the great majority of her subjects agreed with the petition that she would reject the prayer for the maintenance "of the Constitution as by law established." Several members of Parliament accompanied the deputation which presented the ministerial petition to the Governor.

including contracts to borrow money for the payment of existing legal public liabilities."

On the 20th October he enclosed the petition of the Council in a lengthy despatch. He insisted that the tacked bills were "impounded," not lost, in the Council. He forwarded an opinion from Mr. Higinbotham that they were not lost, "although it is not very clear what is the precise effect, according to parliamentary practice, of the laying aside of a bill." He affirmed that the facility with which the Council passed Money Bills showed how "insignificant, therefore, was the alleged disregard of their legislative rights." He met the allegation that "the arrangement with the bank was not only collusive, but unconstitutional, if not revolutionary," by "an explicit assertion of its total want of foundation of truth," if it was the purpose to "allege that the so-called 'scheme' was concocted between me and my ministers with the object, not of satisfying the public creditor, but simply of defrauding the Council of their right to reject or pass the Appropriation Bill, or of any other right."

He averred that "the Assembly," his "advisers as a body," and "the law officers of the Crown" did not regard as lost a bill which was laid aside. In sixty-one paragraphs he defended all that he and his advisers had done, and denounced the Council and its supporters as "so fatuous as to believe that" he would be censured or recalled. Inspired by his advisers, he declared that the "unequivocal expression of confidence in them personally, and of satisfaction with their general policy" (which the petition of the Council had) "evoked in all parts of the colony, except from those sections of the community to whose immediate interests that policy does not minister," justified his adhesion to them. That any man could, from a sense of right, and without prospect of gain, desire the Constitution to be respected was not conceivable in the mind of the framer of the Governor's despatch. Sir C. Darling enclosed an address, in which the Assembly had thanked him for "averting the anarchy and confusion calculated to result from the withholding by the Legislative Council of its assent to the supply and appropriation for the year."

One of the ministerial supporters in the Council sought to restore the lost bills to the business paper. Mr. Sladen, on the other hand, sought to obtain the concurrence of the Assembly with an address to the Queen praying that the difference between the Houses as to the construction of the Constitution might be referred to the Judicial Committee of the Privy Council. The respective notices were on the business paper when the Council adopted their petition to the Queen (21st Sept.). On the 3rd October, Mr. Sladen's motion, that it was expedient to have recourse to the Privy Council, was carried, and the Assembly were invited to appoint a Committee to assist in preparing a joint address. The Assembly retorted that "it was inexpedient, under any circumstances, that such differences should be referred as proposed," but they were willing to appoint a Committee "to confer upon the subject generally."

There were various futile attempts to procure a conference, and (31st Oct.) a message acquainted the Assembly "that, as the Supply and Appropriation Bill was finally disposed of on the 25th July last, it could not be the subject of a conference," but a Committee had been appointed on the question as to parliamentary usage. The Committee was chosen by ballot. Mr. M'Culloch required time to enable him to consider his position. His consultations lasted a week. On his motion (8th Nov.), the Assembly regretted that the Council, by the "determination to treat the laying aside of (the tacked bills) as a final disposition of that bill by the Council," had "precluded themselves from fulfilling their intention to appoint a Committee to confer" generally on the differences which had arisen on the bill.

Mr. M'Culloch complained that the Council had ill-treated the Assembly by not explaining[27] at an earlier date the significance of laying aside a bill. However, he would now treat the tacked bill as lost, and would introduce a new Customs Bill, which would repeal a clause concerning units of entry; and he warned the Council that "if the repeal of the Units of Entry Act is thrown out it will be

[27] If the Council had explained parliamentary usage, they might have been censured for presumption in instructing the Assembly.

the duty of the government, as it will be the wish of this House, to collect the Customs Duties under the Units of Entry Act (under which power was left to the government to fix the units of entry on goods). There is sufficient power within the four corners of that Units of Entry Act to enable the government to collect the tariff as passed through this House, or indeed *any other tariff whatsoever*."

This exposition of his views on constitutional government satisfied his supporters. The Council rejoined that the Assembly appeared to be "under a wrong impression in supposing that the Council had only lately determined to treat the laying aside" of the tacked bills as a "final disposition" of them, inasmuch as, "on the 25th July," they considered, and had ever since considered them finally disposed of.

Meantime, petitions in support of the "Constitutional party," as the Council's friends were styled, were sent to the Queen. Sir C. Darling, in forwarding one of them, disparaged it as signed by somewhat less than a tenth of the male adult population, and could hardly believe that the "sense of alarm and insecurity they expressed" was seriously entertained by the "majority of the petitioners themselves." Remission and levy of duties at the Custom-house in defiance of a judgment of the Supreme Court,[28] and lawless abstraction of money from the Treasury, were not, in his mind, calculated to excite alarm. A petition from a rural township furnished him with an opportunity to thank the burgesses for assuring him that the act for which he had been "assailed with personal opprobrium by a small section of the community had "saved the colony from confusion and distress." "The spirit in which the small section" acted might be gathered from the attempts made to send into his "presence in the guise of a deputation the very men from whose lips" most offensive expressions had proceeded, and from "the grossly insulting language" of their organ in the press.[29]

[28] Mr. Higinbotham thus disposed of the judgment in a memorandum sent to England by Sir C. Darling: "Nor can the government," acting at the instance and in support of the authority of the Legislative Assembly, allow the "decision of the Supreme Court to stop the collection of the duties."

[29] Enclosure in despatch, 24th November 1865.

Little as Mr. Higinbotham respected a law which he disliked, he strove by words to enmesh his opponents. Until 1865 the preambles of Money Bills merely declared their enactment by the Queen, with the "advice and consent of the Legislative Council and the Legislative Assembly." For the new Customs Bill he framed a preamble affirming that the Legislative Assembly was the sole grantor of supplies. He denounced as "fraudulent speculators" those who had brought actions to recover the duties unlawfully exacted, and the new bill was carried by thirty-nine votes against fourteen. It was retrospective, and a clause (produced without notice) provided that any actions or proceedings, "verdict, judgment, order or decree" of the Supreme Court inconsistent with its retro-action, should be "set aside without costs." The Standing Orders were suspended, and the monstrous clause was passed. To members who, on the following day, objected to its insertion without notice, the Attorney-General replied that "substantially every person had notice." He had himself announced that all means would be taken to defeat the actions. "To give full effect to that intention it became necessary to introduce some supplementary words," and it was their own fault if members were absent at the time. The bill was sent to the Council (15th Nov.), and on the following day was rejected by nineteen votes against five.

When an appeal to the country had been once suggested, Mr. Higinbotham answered that the government were "not going to give such a chance;" but a casual election gave hope that the ministry would gain by it. The Governor became anxious. He told Mr. McCulloch that the recognition by the Assembly of the loss of the tacked bills deprived of parliamentary force the resolutions on which the bills were founded. His responsibility for the arrangements with the bank was greatly increased. He thought the Assembly should be invited to pass an Appropriation Bill, and if they should decline to do so, be dissolved "for that reason alone." He discovered the worth of his advisers' professions of sympathy. They would not ask the Assembly for supplies. To do so, and to appeal against the decision of the Assembly, would be a desertion of that

body, and would put the "issue between the two Houses to the country imperfectly and unjustly to the Assembly." They warned him against accepting their resignations (which, with a show of magnanimity, they had proffered some weeks before). "If His Excellency see fit to call in other advisers the year will have ended before they will have an opportunity of introducing the Appropriation Bill, and the dissolution, and the settlement dependent upon it, will be therefore indefinitely postponed."

Thus beset, the Governor consented that his advisers might state any grounds as their reason for a dissolution; they having previously informed him that their war-cry would be "the rights of the Assembly." The Council sent him an unregarded address, reminding him that no Appropriation Bill had been transmitted to them as a separate measure; that they were, as they had previously informed him, willing to pass it; and that mischievous consequences might arise from a prorogation under the circumstances.

On the day on which the address was adopted (28th Nov.) the Governor prorogued Parliament. The questions which had arisen would, he said, "make it memorable in the annals of the country." The failure to revise the tariff was a subject for regret, as well as the fact "that the Constitution provides no means by which disputes between the Houses can be determined." To elicit "the enlightened will of the community" on "definite issues," he was about to "exercise the important and delicate trust . . . of dissolving the Assembly, a result from which, be it said to its honour, it has not shrunk, as the history of the last few days has shown." He trusted that "the opinion of the constituencies" of the Assembly would settle the matter, and that the two Houses would legislate accordingly. That the Council also was an elective body, and that periodically one-fifth retired, neither he nor his advisers thought it useful to remember.

Ministerial supporters had at a secret meeting agreed to a dissolution. They desired to banish from their Chamber certain persons who had presented to the Governor a petition to the Queen. There were forty-five persons living who had become members of the Executive Council under responsible government. Twenty-two of them signed the

petition, eleven were absent from the colony, two were Judges of the Supreme Court, three declined to sign, and the remainder were the McCulloch ministry. The petitioners described the acts which "from week to week" were done, and which "could not have been committed, much less persisted in, if His Excellency the Governor had not given them the sanction of his authority." They besought Her Majesty to take such steps as might "appear necessary for maintaining the Constitution in its integrity, and for securing due observance of the law." The petitioners did not publish their doings, but the Governor consulted his ministry. He allowed the Treasurer (Verdon) to excite commotion in the Assembly by commenting on the petition before it had been transmitted to the Queen. He postponed its transmission for some weeks, and allowed the animosity of his advisers to distemper his reply (23rd Dec.) He alleged that the design to recover at law duties illegally exacted was, "however feasible in law, certainly of questionable morality," and he proceeded "to expose the true character of" the memorialists. He admitted that it might "appear remarkable that almost every member of the Executive Council who is not at present an adviser of the Governor should have united in preferring this impeachment of my conduct," but he could explain the coalition. Every mercantile signer was "directly, personally, and avowedly interested in the rejection of the revised tariff which lies at the root of the present political situation." Others were "active, and in some instances virulent, political opponents" of the ministry. A formal argument was directed against Mr. Fellows, who had once, on erroneous information as to the English practice, stated that votes of the Assembly made money legally available before embodiment in an Appropriation Act, but had, on learning the truth concerning the English usage, candidly admitted his error.[30] Mr. Fellows, Mr.

[30] Mr. Fellows was generally recognized as one of the ablest lawyers in the colony. The despatch writer argued that Mr. Fellows' opinion was "of no weight whatever," and that of him and other signers "it is difficult even now to say what their real opinions are, or at any rate what they would be declared to be if their political position were again changed." This sentence was not ascribed by colonial readers to the man who signed it; the date was 23rd December 1865.

Dennistoun Wood, and Mr. Ireland were accused of "ministering to their own personal and pecuniary profit by conducting actions brought against the government under their advice." Nothing could "more completely exhibit the spirit of political intrigue" than Mr. O'Shanassy's case. That gentleman was "utterly inconsistent, insincere, and unconstitutional." After defending himself and his advisers, the Governor turned upon his assailants, accusing them "one and all of conduct highly discreditable," amounting "to a treacherous conspiracy against the Governor." They had "suppressed—wilfully suppressed every material fact and circumstance" on which the Governor justified his conduct. "Vindication of public morality" called for their dismissal, and but for the fact that their removal at a time when many of them were candidates for the new Assembly, might be liable to misapprehension, the Governor would "have suspended them all from office until Her Majesty's pleasure were known." Whatever course Mr. Cardwell might advise Her Majesty to adopt, the incautious Governor declared it

"impossible that the relations between the petitioners and myself can, in the face of this conspiracy, be such as ought to subsist between the Governor and gentlemen holding the commission of an Executive Councillor, whether occupying or not responsible office; and it is at least to be hoped that the future course of political events may never designate any of them for the position of a confidential adviser of the Crown, since it is impossible their advice could be received with any other feelings than those of doubt and distrust."

Thus did the compliant Sir C. Darling tip the envenomed shaft which was to lay him low.

Mr. Francis, whose ill-assorted notions had led his colleagues into antagonism with their avowed principles, distinguished himself as a mal-administrator in his own department. When in February he exacted increased duties on certain articles in conformity with his proposed tariff, he did not levy a diminished duty on those articles on which his scheme lightened the duties. The throwing out of the tacked bills in July, the condemnation by the Supreme Court of unlawful levy, afforded no light to Mr. Francis. He pursued his course for a time. Suddenly (11th Oct.) he issued a notice that, not the existing legal duties, but the proposed reduced duties would be collected at

the Custom-house. No bonds were taken for the difference unlawfully remitted, and the revenue was subjected to plunder by authority. He himself was a dealer in some of the articles affected (tea, sugar, &c.), but no one imputed his wrong-doing to personal greed. When the Council rejected the Tariff and Gold Duty Bill in November, he abandoned the collection of the increased duties, but still abstained from demanding the lawful amount on articles on which he wished to lighten the impost. Only the prorogation restored the law in the Custom-house. Maugre all these things, the Governor was made to say that the troubles of the colony were but "a repetition of similar scenes in the mother country," and that the incidental irritation was, he trusted, "more than compensated by the additional proof they afford of the vigorous public life of the colony, and of its fitness to enjoy representative institutions."

The elections were held early in 1866. Confidence in their land policy, and shapeless expectations of benefit from protection, supported the ministry in rural electorates. At the goldfields the proposed abolition of the gold export duty was traditionally popular, and though companies were to pocket the abandoned royalty individual miners cast in their lot with the companies. Everywhere the Council was bitterly assailed. No term was too vile to be hurled at the members. Their age, their own small number, and that of their constituents, were among the reasons why they should be trampled into obedience or out of existence. The compactness of the colony facilitated the bringing of pressure upon the electorates, and the ministry used it without stint. Riotous bands went from suburb to suburb to howl at the Constitutionalists, and prevent their speeches from being heard or reported.

While the friends of law and order contended at the hustings, a despatch from Mr. Cardwell warned the ministry and the Governor of the dangers of their course. They did not promulgate it; but they hinted that it betrayed no desire to interfere with local affairs, and that it would be necessary for the colony to resist any such interference if attempted. Even without the light which Mr. Cardwell's words would have afforded, the electors in

the metropolis and suburbs exhibited independence galling to the ministry. Mr. Higinbotham was placed in a minority by the most populous portion of his constituency (Brighton), and only secured a total majority of forty-six by the votes of ardent protectionists in the rural parts. His opponent was Mr. J. Wilberforce Stephen, who supported the position of the Legislative Council. The most effective placard used by Mr. Stephen's friends was one which, without comment, reprinted Mr. Higinbotham's own election card of 1861 side by side with his votes in 1865.[31] So detrimental was the republication of his own card deemed that the chairman of his committee destroyed it, and was prosecuted for doing so. The despatch (27th Nov. 1865), which Sir C. Darling kept from public knowledge until the end of April 1866, enumerated the facts of the case before pronouncing upon them. A few sentences may be cited. "I have no hesitation in saying that, independently of the judgment of the Supreme Court, no consideration—at least, none that is discernible in your despatches—should have induced you to give your concurrence to the levying of these duties." The plea of the validity of the resolutions of the Assembly, based on the English practice, was "manifestly irrelevant." In England, if the concurrence of the two other branches of the Legislature "were withheld, the sums so levied by anticipation would be repaid, and they would, of course, be no longer levied." But the Governor and his advisers were

"perfectly aware that the bill would not receive the sanction of the whole Legislature, and the exaction of these duties was not in anticipation, but

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[31] 1861.
MR. HIGINBOTHAM'S ELECTION CARD OF JULY.

Brighton Election.
MR. GEORGE HIGINBOTHAM IS IN FAVOUR OF FREE TRADE.
. . . . . .
Retention of the Gold Duty.
. . . . . .
AND IS OPPOSED TO Payment of Members; Protection; Conferring upon the Governor the power of dissolving the Upper House.

1865.
MR. HIGINBOTHAM'S VOTES IN PARLIAMENT.

Payment of Members. 7th April, 1865. Mr. Higinbotham voted at the rate of £300 for each member.
Gold Export Duty. 2nd February, 1865. Mr. Higinbotham voted for the Abolition of the Duty.
Mr. McCulloch in his address to the electors of Mornington says: "The government is prepared to give the Governor power to dissolve the Council."

in defiance, of the judgment of the Legislative Council. It was therefore not only in its origin unlawful, but there was every reason to presume that it would remain so. I look with extreme apprehension on a state of things in which the government of a British colony is engaged in collecting money by mere force from persons from whom the Supreme Court has declared that it is not due. . . . I do not understand on what ground it can have been imagined that you were legally authorized to borrow from a private bank large sums of money on behalf of the public. No authority is alleged, and I am unable to conjecture any. . . . If payments were legally due . . . it was open to (claimants) to recover what was so due in the ordinary course of law. It was for one or other branch of the Legislature to yield, or for both to compromise their difference. It was not for you to give a victory to one or the other party by a proceeding unwarranted either by your commission or by the laws of the colony. . . . By such a proceeding the Governor and his government might . . . at any moment withdraw any amount of public funds from the public account to which it is consigned by law, and place it at their own command, relieved from all the checks with which the Legislature has carefully surrounded it. The expenditure of the moneys thus obtained was (apparently equally irregular). . . . It is not alleged that the Supreme Court was ever called upon to give judgment on the question, and you do not inform me of any law which would warrant you in paying away any public money except under the authority of such a judgment or of the auditors' certificate. . . . As at present advised, therefore, I am of opinion that in these three respects—in collecting duties without sanction of law, in contracting a loan without sanction of law, and in paying salaries without sanction of law—you have departed from the principle announced by yourself and approved by me, the principle of rigid adherence to the law. I deeply regret this. The Queen's representative is justified in deferring very largely to his constitutional advisers in matters of policy and even of equity. But he is imperatively bound to withhold the Queen's authority from all or any of those manifestly unlawful proceedings by which one political party or one member of the body politic is occasionally tempted to establish its preponderance over another. I am quite sure that all honest and intelligent colonists will concur with me in thinking that the powers of the Crown ought never to be used to authorize or facilitate any act which is required for an immediate political purpose, but is forbidden by law. It will be for the gentlemen who guide the opinions of the colony or form the majorities in the two Houses to . . . ascertain, and you will of course afford them every facility for ascertaining how the government of the country is to be carried on. It is for you to take care that all proceedings taken in the Queen's name, and under your authority, are consistent with the law of the colony. . . ."

To this despatch the Governor transmitted a prompted reply (22nd Jan.). Mr. Higinbotham resented the intervention of an English, as an invasion of the dignity of a colonial, minister. The Governor was told to say that "the final judgment of the Full Court upon the questions of law . . . was not given, nor was final judgment entered up and recorded until the month of December, some time after the duties had altogether ceased to be

collected." The "sufficient authority as to what is legal or illegal" . . . (he had deemed) "the opinion of the law officers of the Crown in the colony. That opinion I both took orally and obtained in writing, and did not fail duly to communicate to you. It affirms the legality of borrowing money for the purpose of meeting the legal liabilities of the government."

When the Assembly asked him to take steps to maintain the "efficiency of the public service," he "regarded this resolution as to all intents and purposes a vote of credit," and "ample authority for the Executive to incur financial liability, subject to a subsequent audit and Legislative approval of the expenditure." He declared that the "honest and intelligent colonists . . . most favourably regarded" all that he had done, and insinuated that Mr. Cardwell's strictures were founded not on facts supplied by the Governor, but on private information.

Having thus disposed of Mr. Cardwell, the ministry met the new Parliament in February. Mr. Henry Miller—who in the previous session had adjured the Council to "nail their colours to the mast," and asked what could be expected when a tyrant minister called upon "the lowest of the low to rise up and execute lynch law upon certain members he thought proper to denounce"—had become a ministerial supporter in the Council. Sir Francis Murphy was re-elected Speaker. He explained his recourse to the ministry to secure his return. "I had to consider under the circumstances what was best to be done, and as a party was opposed to me I had to see what party I could look to for assistance. I had no other resource than to ask the government, upon grounds of public feeling, whether they were willing to assist me in obtaining a fresh seat or contesting my own." A time had arrived in which to some men it seemed prudent to have no principles, or express no opinions.

The Governor invited the Houses to settle the questions on which the country had pronounced. The Assembly echoed his speech. The Council, disclaiming any desire to interfere unduly with fiscal questions, apprised him that "as required by the Constitution Act (they would) always insist upon a strict adherence to the usage and practice of

the Imperial Parliament in regard to the contents of bills." If clauses dealing with revenue derived from Crown lands should be included in Supply Bills, it would be their "duty to pursue the same course" as in the preceding session.

The despatches to and from England were not laid before the Houses until April. From one of the Governor's he withheld a sentence commenting on exasperation of the Free Trade League at the result of the elections, and at his inability to take a view of his duty which would "conduce to the promotion of their pecuniary and personal interest." The omitted phrases appeared in the documents laid before the House of Commons.

A clause in the Constitution Act (45th) "permanently charged the (consolidated revenue) with all the costs, charges, and expenses incident to the collection thereof," subject to review and audit as "directed by any Act of the Legislature." It was transcribed from Wentworth's bill. Mr. Ebden's Audit Act defined the method of audit. In October 1865 Sir C. Darling had sent to England a minute (of his own) suggesting that under the 45th clause the "salaries of most of the civil servants were . . . provided for by a permanent law, and therefore independent of further legislative sanction." Mr. Higinbotham and Mr. Michie elaborately confirmed that minute (22nd Sept. 1865). Collusive arrangements with the bank were providing funds at the time. When they were condemned attention was turned afresh to the scheme for dispensing with Parliamentary control.

The Governor, by arrangement, invited his Treasurer in future to submit with warrants, under special appropriation, a certificate from the Commissioners of Audit that all appropriations made under the 44th and following sections of the Constitution Act had been "duly carried into effect." The certificate of the Audit Commissioners was to show that the required money was "legally available." The Treasurer handed the Governor's minute to the Commissioners. They pointed out that their certificates, though carefully weighed, were never held to imply that "priority of claim" was guaranteed in them. They showed that the Attorney-General had given a distinct opinion (Feb. 1865) that they were only required to "ascertain that Parliament

has sanctioned the expenditure of public money for the particular purpose, and has provided funds." This opinion coincided with their previous practice. To depart from it in the manner proposed would withdraw from the control of the Assembly all expenses connected with receipts and collection of the revenue, and would make it impossible to remit funds to England, in anticipation, to meet interest due on railway bonds. They suggested that an existing Civil Service Act would justify them in giving certificates after the Assembly had in each year fixed the maximum and minimum salaries in each class. No government, however, had as yet acted upon the provision in that Act.

Mr. McCulloch carried down the necessary message concerning the salaries, but shrank from acting upon it. The Governor again (19th Feb.) referred the matter to "the Cabinet." That body did not announce a decision until the 15th March. They had not flinched from violating the Constitution, but the hint of the Audit Commissioners about infringing the rights of the Assembly alarmed them. They might perish under the fangs of their own hounds. They discovered that the law officers' opinions were untenable. "The appropriations in the Constitution Act, and by the Civil Service Act are not special appropriations in the sense in which the term has been usually employed." There were qualifying conditions. The Audit Act, not inconsistent with the Constitution, must be read with it. "In any case I apprehend (the Treasurer wrote) the Constitution Act will not be so interpreted as to take from the Legislative Assembly its rightful control." Plots against possible successors influenced the ministry. What they had wished to do they wished to prevent others from doing. They resigned office on the day on which, by the hand of the Treasurer, they condemned the weapon which they had been shaping so long. They had again tacked to a Customs bill a bill (Gold Export Duty) dealing with the droits of the Crown. The tack was opposed in the Assembly, but Mr. Higinbotham defiantly said "the government came into Parliament not to discuss the tariff, but to pass it." The Parliament had "come together to pass the tariff."

On the 13th March the Council rejected the tacked bills, because they repealed existing permanent laws and enacted

"merely temporary provisions in their stead;" because the revenue derived from the gold royalty was "foreign to a bill of aid or supply, and has always been separated therefrom in legislation;" and because the preamble was without precedent, and implied that "the constitutional disability of (the Council) to originate or alter bills . . . (was) not the only difference between the powers of the two Houses in regard to such bills." Resolved to throw upon their opponents the task of forming, or the ignominy of failing to form, a ministry, McCulloch and his friends would not leave them the skeleton key which they had prepared for rifling the Treasury when collusive loans became impracticable. They endeavoured to conceal the traces of their work. When despatches were afterwards communicated, portions of their contents were kept back; though in the English Parliament the deficiency was often supplied. Pressed to introduce a Money Bill to enable public creditors to be paid in March, the ministry refused; and having dismantled the fortress which they had been making strong for their own purposes, they tendered their resignations with an explanatory minute. The character of it may be inferred from one its statements. The ministry expected that the Tariff Bill when "no longer obnoxious to the objections urged on a former occasion," and separated from the Appropriation Bill, would pass, and the "conflict between the Chambers might be terminated." They sent it to the Council. "It was then objected that the repeal of the gold duty was improperly included in the measure." They knew (when they referred to this as a new objection) that in the motion rejecting the tacked bills of 1865 the Council recorded the inclusion of the gold duty repeal as one of the reasons which compelled them to reject it. Nevertheless McCulloch described the objections of the Council as "mere pretexts," and believed that the members, "utterly indifferent as to the character of the tariff . . . awkwardly masked a deeper policy."

When the ministerial manifesto became public the Council refuted the allegation that the tacked bills were freed from the objections urged in 1865. The refutation was recorded in their journals, and the Governor was requested to forward it to the Secretary of State if he

should deem it his duty so to forward Mr. McCulloch's minute. On the resignation of the ministry the Governor did not send for Mr. Fellows, but asked in writing whether he would be prepared to form "an administration." Mr. Fellows answered that if it should be found impracticable to form "a Protectionist ministry," he would endeavour to form an administration. He thought that the Governor ought to communicate with some member of the Assembly with a view to appointing a ministry whose views coincided with those of a majority there. He also presumed that the Governor would impress on the existing ministry the necessity of pursuing the invariable course of obtaining supplies and giving legal effect to votes for the public service pending any elections required.

The Governor (still advising with his old friends) declined to communicate with any member of the Assembly. He evaded the topic of a Supply Bill, and asked for the names of members in either House whom Mr. Fellows would propose to him. On the 17th March he received a communication (26th Jan.) from Mr. Cardwell confirming previous despatches; regretting that the Governor had deferred to advice to "pass by the decision of one branch of the Legislature;" declaring that it was "always the plain and paramount duty of the Queen's representative to obey the law, and to take care that the authority of the Crown derived to his ministers through him is exercised only in conformity with the law;" trusting that "forbearance and wisdom" would enable the colony to "solve its own difficulties" without the lamentable necessity of reference to the Imperial Parliament, which (however) undesirable as it was, "would be infinitely preferable to a violation of the law."

The Governor withheld this despatch from public view, although he was specially directed to communicate it to the Council. Even the formal acknowledgment of the address from the Council to the Queen, stating that "Her Majesty had been advised that the proceedings which gave rise to it were contrary to law, and had given instructions intended to prevent their recurrence," was kept back until May, when the arrival of information from England made further concealment impossible. His advisers were grow-

ing imperious. A newspaper commenting on McCulloch's statement announcing his resignation, said that it "fairly bristled with falsehood." On the 16th March, McCulloch induced the Assembly to declare the article "a scandalous breach of" their privileges. The Attorney-General, who had once edited the newspaper, seconded a motion to summon the printer (his former friend) to the bar. To strengthen their position, friends of the ministry strove to pass (16th March) a resolution pledging the Assembly to withhold "confidence from any administration which (should) refuse or neglect to adopt" the tacked bills "already submitted to the Council." McCulloch disclaimed complicity with the resolution. Higinbotham urged that it "ought to be passed before the new government came in."

An amendment that the tariff by itself should be sent to the Council, as members had expressed a willingness to pass it, was rejected. The Governor, blinded by these triumphs, wrote (29th March) a despatch to the Secretary of State, commenting on the characters of members of the Free-trade League. One was an ironmonger, another an outfitter, and one he knew, on the best authority, had "passed through the Insolvent Court, or made assignment under the Act within the last few years."[32] On the day on which he thus wrote, Mr. Fellows announced that he was prepared to submit the names of his colleagues, and again urged that the Governor might suggest to McCulloch the obtaining of temporary Supply. He believed that, on the

[32] On the same day the offending printer appeared at the Assembly bar. He admitted the publication, and inquired whether he might be heard by counsel. Mr. Higinbotham opposed a motion to that effect. The printer read a statement. Mr. Higinbotham moved his committal to custody. The printer had aggravated his offence. "If that be the liberty of the press, I say the liberty of the press must be suppressed." The printer declined to petition for release, even when McCulloch returned to active power in a few days. Wishing to be rid of his prisoner, McCulloch (27th March) moved that he be discharged on payment of his fees. But he would not go on such terms. He was allowed to see friends, and his former friend Higinbotham inveighed against incarceration "converted into a means of personal recreation and enjoyment" Another time the House ought to imprison "editors and proprietors" with publisher. The country press teemed with denunciation of the tyranny of the Assembly, and Mr. Higinbotham's views did not receive public sympathy.

Governor's invitation, the Assembly would not decline to adopt the usual practice. If it should refuse, he hoped that impartiality would induce the Governor to grant a dissolution.

Sir C. Darling tardily replied that he could not, with any appearance of consideration for the McCulloch ministry, ask them to obtain for others a vote which they could not seek for themselves. Neither would he dissolve the Assembly. Mr. Fellows replied that, under such circumstances, the gentlemen he had consulted were unwilling to proceed in the matter, and he looked upon the refusal to grant facilities for obtaining Supplies or to dissolve, as an attempt to coerce the Council. In attempting to form a ministry, Mr. Fellows had not improved his position. The Council had never claimed, nor had the Assembly ever recognized, that such a responsibility should accrue because of the loss of any measure in the Council. To assert that it ought to accrue when the action of the Council was mere resistance to aggression was to court failure.

At this time, to terrify sober people, a torchlight procession was arranged, and members of the Assembly who supported McCulloch were prominent in the demonstration. Fortunately, common sense existed amongst some of his followers. The possible, if not probable, consequences of such proceedings alarmed many citizens, and the first fiery procession in honour of the ministry was the last. Meanwhile the Governor, having kept not only from the public, but from those whom he had nominally entrusted with the task of forming a ministry, all knowledge of Mr. Cardwell's instructions, took McCulloch again to his bosom.[33] On the 28th March, McCulloch announced that the Tariff Bill would be again introduced, with an alteration as to the date of its coming into operation.

[33] On resuming office McCulloch furnished the Governor with an elaborate minute, in which he assailed the Council, and hoped that body would make concessions which would "render the continuance of government according to law possible." The minute emphasized the fact that the Appropriation Bill was presented for the Royal Assent by the Speaker, and said the provision "originated with the Council." It was, however, a Joint Standing Order framed in compliance with the 34th section of the Constitution Act.

Though the Opposition were overborne by votes of those who were informed that they were to pass, and not discuss, measures, protests were made. Alluding to the torchlight procession, and the imprisonment of the printer by order of the House, a member denounced the "incarceration, of which the House ought to be ashamed, and a brute force exhibition which the ministry had encouraged, and which the Chief Commissioner of Police ought to have been instructed to put down."

A ministerial friend moved in the Council (4th April) that a Committee be appointed to confer with a Committee of the Assembly on the "differences now existing between the two Houses" with reference to "Bills of Supply." After discussion, the motion was withdrawn, but was to be renewed on the 11th April—McCulloch having induced the Assembly to adjourn while his friend strove to influence the Council.

The Governor meanwhile appealed (6th April) to Mr. Cardwell. He was devoting his best consideration to the question whether there were any means by which effect could be given to the "orders that the government should not levy any Customs duties except those which are absolutely fixed by the consent actually given of the three branches of the Legislature." Unless confused by his advisers he would have known that such a statement was a perversion of Mr. Cardwell's clear instructions. On the 10th April he informed Mr. Cardwell that it was hoped that a conference might lead to a termination of disputes. Throughout these troubles he was restrained by his advisers from revealing the nature of Mr. Cardwell's despatches. On the 10th April, their torchlight meeting having singed the fingers of the ministry, their prisoner being resolute to remain in their hands, and further concealment of Mr. Cardwell's instructions becoming daily more difficult, the Parliament was prorogued by a proclamation which re-convoked it for the following day. The warrant under which the printer was held died with the session.

On the 11th April the Governor in person stated—"In order that the Supply Bill of last session may be again considered, it has been found necessary that there should be a new session," and therefore the House had been called

together. The Customs Duties Bill, tacked to the Gold Export Bill, was sent on the 11th April to the Council, and in conference it was agreed that upon the assurance that the repeal of the gold duty was inserted in the "bill as a tax, and not as territorial revenue, and upon their disclaimer of any intention on the part of the Assembly of tacking it, with a view of coercing the Council to pass it," the Council should not insist on their objections.

The preamble was altered after much discussion. The exact words to be used were agreed upon. Instead of asserting that a grant was completed by a vote in the Assembly, the preamble was to state the fact that the Assembly had voted in a certain manner.

"Whereas we, . . . the Legislative Assembly, . . . in Parliament assembled, did . . . freely and voluntarily vote that a supply be granted to your Majesty, and whereas towards raising such supply . . . we did . . . vote that the several duties hereinafter mentioned be charged, we do therefore . . . beseech . . . and be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council, and the Legislative Assembly of Victoria, &c., &c.[31]"

The clause limiting the operation of the bill was abandoned by the Assembly; by mutual consent the bill was discharged from the business paper in the Council, in order that a new one might be initiated in the Assembly, and on the 18th April the bill, amended as agreed to, as well as a new Appropriation Bill legalizing expenditure during 1864, 1865, and 1866 (to the great relief of the public mind) became law.

Then, and not till then, did Sir C. Darling (1st May) communicate the despatches commanding him in all cases to obey the law. Then only was the answer to the address of the Council to the Queen made known, though it was found to have been in the Governor's hands while he consulted

[31] The preamble of the tacked bills, 1865, was, "Whereas we . . . the Legislative Assembly . . . have . . . freely and voluntarily resolved to give and grant unto your Majesty the several duties hereinafter mentioned, and whereas we the members of the L.A. aforesaid have granted to your Majesty the several sums in the Schedule hereto . . ." After the conference, and in compliance with it, the preamble of the Appropriation Bill of 1866 was made to state: ". . . whereas we . . . towards making good the supply which we have cheerfully voted . . . have resolved to vote . . . the sums hereinafter mentioned . . ."

with Mr. Fellows as to the formation of a ministry. Thus, at last, was explained the zeal of McCulloch to effect a compromise. Thus was it discovered why the persistency of Higinbotham was excluded from the conference. But the public did not discover the whole truth. Beguiled, confused, and hurried by his advisers into acts of partiality and contention, Sir C. Darling, whose early training had been military, had a sense of duty which, though dormant under the influence of his advisers, was not dead. When he received distinct instructions from the Queen, he would obey them. Finding this to be the fact, and knowing that copies of the despatches from England would soon reach the colony, McCulloch consented to the compromise recommended by the Conference Committees. Higinbotham, wounded in spirit, held aloof. His sympathy for the Governor, perhaps, deterred him from stirring his supporters to refuse submission to the "foreign nobleman" or "clerk in Downing-street."[35]

The Governor, hoping for a compromise, did not disclose his instructions until it had been effected. But there were passages in his own despatches which his advisers did not desire to reveal to those assailed in them. McCulloch, who imprisoned a printer for impugning his statement, was equal to the occasion. He declared in the House (25th April)—"There was no desire to withhold the despatches; they would be given every one from beginning to end. No one was more anxious that this should be done than His Excellency himself."

Several despatches were, nevertheless, kept back, and became public in the colony only after having been printed by order of the House of Commons. When McCulloch produced those communicated to the Victorian Parliament in April 1866, it was evident from his manner that he was concealing something when he pleaded that it had been requisite "to recast the form in which the despatches were to be produced."

The ministry might well be confounded. The poison infused into the Governor's despatches had been fatal to

[35] By such epithets he was wont to describe the Secretaries of State, and the accomplished Sir Frederick Rogers, who subsequently became Lord Blachford.

him. A despatch recalling him arrived in April. No general correspondence from England dwelt on his recall, but a telegram from Ceylon carried the tidings which the mail steamer received and bore with it while it brought the despatch. Concealment was no longer possible. It is unnecessary to transcribe the cogent, yet courteous phrases in which Mr. Cardwell met the arguments which the Governor's advisers had prompted. The cause of recall was Sir C. Darling's intimation with regard to the twenty-two Executive Councillors that it was "impossible their advice could be received with any other feelings than those of doubt and distrust." Mr. Cardwell had in previous despatches desired to lighten, as far as he could, the painful consequences of what it had been necessary to write, and

"to avoid even the appearance of taking part with one side or the other in controversies which ought to be locally decided. . . . It is your own act now which leaves me no alternative; you force me to decide between yourself and the petitioners. You place me in the position of having to determine whether you can continue to represent the Queen in a colony in which you have avowed that none of these gentlemen can ever be received by you as confidential advisers with any other feelings than those of doubt and distrust."

The Queen's representative ought to keep aloof from all personal conflicts, and

"so conduct himself as not to be precluded from acting freely with those whom the course of Parliamentary proceedings might present to him as his confidential advisers. While on the one hand it is his duty to afford to his actual advisers all fair and just support, consistently with the observance of the law, he ought, on the other hand, to be perfectly free to give the same support to any other ministers whom it may be necessary for him at any future time to call to his counsels. The colony is entitled to know that the Governor gives this support to his ministers for the time being, and that he is able and willing if the occasion shall arise to give the same support to others." "I regret to say that in the present instance you have rendered this impossible. It must be evident to yourself that you occupy a position of personal antagonism. . . . It is impossible, I much regret to say, that after this you can with advantage continue to conduct the government of the colony."

The General on the spot would act as administrator until a successor might be appointed.

"I trust that no occasion will arise in which it will be clear to his judgment that the advice of his ministers for the time being would involve a violation of the law. In such a case it would doubtless be his duty to endeavour to obtain the aid of other ministers. Her Majesty's Government have no wish to interfere in any questions of purely colonial

policy; and only desire that the colony shall be governed in conformity with the principles of responsible and constitutional government, subject always to the paramount authority of the law."

Sir C. Darling informed McCulloch of his recall, and strove to explain away the paragraph which had caused it. Prompted, if not written by, his fatal advisers, Sir C. Darling's minute was published before it could reach the Colonial Office.[36] But the blow was not less crushing because brought upon the Governor by his own acts; and though it could not be averted, the Secretary of State might be assailed. Mr. Cardwell, himself distinguished, and sprung from a family distinguished at an English University, was described by supporters of the ministry as "a man from the ditches of Birkenhead." Mr. Higinbotham and Sir C. Darling were extolled as faultless. One speaker would, by cutting the bond which united the colony with the mother country, teach her that colonists were not serfs. Another, addressing about 1500 persons, believed that several regiments would be required to clear the market-place of those before him. Another would prohibit the landing of any new Governor.[37] Complimentary addresses were presented to Sir C. Darling. He qualified his claim to be considered reasonable by informing a deputation that in the "recent political difficulties . . . nothing was done that was not justified by law." He was infested with the obstinacy of his advisers. He was made to justify in a formal message to the Council (7th May) the withholding from that body of despatches which he had been commanded to lay before them. The fact that the McCulloch ministry held office provisionally when some of the despatches arrived was pleaded as a defence for not

[36] Mr. Cardwell, in acknowledging (to the new Governor) the despatches, pointed out that it was not consistent with the duty of a Governor, while still holding the Queen's commission, to address such a protest to his Executive Council "against the decision of the government which he had not yet ceased to serve. I notice this, lest by silence I should seem to sanction an objectionable precedent."

[37] A "Committee of Safety," organized after the fashion of a Paris Club, had been formed in April. The ministry were rather disconcerted when it was known that one of their patrons in the Committee had been a convict in Tasmania. There was an attempt to deny the truth, but a respectable man who had been in Tasmania, earnest for the abolition of transportation, would not be gainsaid. In averring the truth he extinguished the Committee.

obeying the order to produce them. Yet he and McCulloch, on the day of the nominal resignation of the latter, had, in order to throw obstacles in the way of Mr. Fellows, recorded a Cabinet minute abandoning the grounds urged by the Governor, and supported by the law officers, for treating the 45th clause of the Constitution Act as a sufficient legal appropriation of supplies without a Parliamentary grant for the year. So clouded had his judgment become that he denied that Mr. Cardwell's despatches on the collection of duties, the collusion with the bank, and the address of the Council, had "any reference to the questions then (March 1866) at issue between the Houses." He had kept them back because it was "probable that they would occasion considerable discussion." Those who preferred disruption from the Empire to failure of their local schemes spoke more boldly than the dejected, but unconvinced, Governor. Mr. Higinbotham was "aware that the Secretary of State had founded Sir C. Darling's recall on a sentence—it may be an impolitic sentence. . . . I think I am not expressing an unfair view when I say that that sentence has been made the occasion, and that it was not the cause, of (the) recall." Mr. Cardwell's despatches "threatened dangers to the public liberties of the people." The speaker would care nothing for Mr. Cardwell if the colonists were but united; but, to his uncomforted mind, merchants seemed ready to purchase a continuance of importing monopoly by surrender of civil government, and pastoral tenants willing, "on the same terms, to defeat the agricultural interest. I believe there is not a discontented official, from the Judge[38] on the bench of the Supreme Court——."

[38] There had been an angry correspondence between one of the Judges and Mr. Higinbotham, who, as Attorney-General, looked upon Judges as "officers of his department." In consolidating a bill he endeavoured to re-enact clauses of an old Act, 15 Victoria, antecedent to the Constitution Act of 1855, which clauses the Judges considered to have been repealed by the later provisions of the Constitution Act. The Judges petitioned against the clauses—the Houses differed—the bill was lost (1865). In debate Mr. Higinbotham warned the "learned persons" that, "so long as he believed the law to be what it was the law should not remain inoperative. So long as he had the honour to hold the position he now enjoyed . . . any Judge should be suspended or dismissed from his office for misconduct according as the circumstances of the case appeared to justify the degree of punishment."

Cries of "shame" interrupted the speaker at this point, and he concluded by urging the House to "use their opportunity (the appointment of a committee on the subject of the removal of the Governor) to the uttermost." One member denounced the Attorney-General's words as traitorous, and called for their retraction. The House made no such demand. The committee was appointed by Mr. McCulloch's followers, and it became known that it was about to recommend a grant of £20,000 to Lady Darling for her separate use, in order to elude the irregularity of making the Governor a recipient of a gift. He, however, informed the House that while "he was yet administering the government his family would not feel at liberty to accept the bounty of the Parliament and people of Victoria until (he) shall have first ascertained whether Her Majesty shall be pleased to signify any commands thereon," and he had petitioned for inquiry as to his conduct. That conduct the Assembly commended. By forty votes against nineteen, it was resolved that the country was "greatly beholden to him for his steady adherence to the principles" of responsible government. Accomplices commending iniquity give new zest to the adage which represents Satan as reproving sin. Triumphant in numbers, if not in sense, the majority carried an address praying that the Queen would be pleased to sanction the acceptance by Lady Darling of the proposed grant.

Mr. Fawkner, in the Council, obtained an order for a return of the amounts recovered of the unpaid duties which Mr. Francis had abstained from collecting in 1865, though for a portion of them he had taken bonds. Mr. Fawkner also asked for the opinions of the law officers as to £62,000 of unpaid duties for which no bonds were taken. Mr. Henry Miller, after a delay of a fortnight, replied—"No amount has been recovered under the bonds, nor will any actions be proceeded with pending the result of inquiry by a Committee of the Legislative Assembly about to be appointed to investigate and report upon the subject. Written opinions regarding the £62,000 have not been obtained from the Crown law officers." The Council (17th May) represented "this serious infraction of the law" to General Carey, the Administrator of the Government.

Nearly £100,000 of Customs duties had been unlawfully remitted. In the Assembly the subject was discussed on the 18th May. Ministerial supporters, admitting that Mr. Francis had broken the law, declared that he ought to be upheld. The bonds might be enforced, but the larger sum they would abandon as the cost of a constitutional "struggle." An amendment moved by a minister, Mr. Vale, declared that "those uncollected duties only for which bonds were given should be collected, and that such duties should be collected forthwith." Mr. Gillies pointed out that to pass such a resolution would be to appropriate certain moneys (cash deposits) to persons interested therein, and no such appropriation could be made except on recommendation by message from the Governor. He appealed to the Speaker on the point of order. Sir F. Murphy thought the House should "be its own judge in the matter," and that he ought not to be asked "to interpret the resolution beyond its obvious meaning." Mr. Gillies would be sorry to ask anything unreasonable, but the Speaker must in previous cases where resolutions had been ruled out of order, have put his own interpretation on the matter. That was all that was asked.

The Speaker.—If I am requested to express an opinion, I must say that I see nothing irregular in the amendment. It is simply a direction for the collection of duties for which bonds have been given.

Mr. Gillies.—Only.

The Speaker.—What is the meaning of only?

Mr. Gillies.—That other duties should not be collected.

The Speaker.—I do not understand that the word releases anything.

Mr. Gillies thought Mr. Vale would be straightforward enough to admit that such was the distinct intention of the amendment. "It proposes that the sum of £63,000 legally due to the Crown should not be collected. If it does not, my argument falls to the ground."

Vale meant "never to vote for the collection of the £63,000." The Speaker considered the meaning of a resolution a different thing from what a member might say. Mr. Higinbotham could not deny the meaning of the resolution to be what Mr. Gillies alleged, but urged, "we

are not to be guided by what we may suppose to be the meaning of a resolution." The Speaker thereupon declared that his ruling must be adhered to unless the House should decide otherwise. A member moved that Vale's amendment was "not in order." The Treasurer (Verdon) implored the mover to withdraw his proposition. Mr. Gillies was dealing in his usual pungent manner with the case, when Mr. Vale withdrew the obnoxious word "only," in which the Speaker could find no meaning, but which was intended to relieve debtors to the Crown of large liabilities.

The Council called the attention of the Acting-Governor to infractions of the law by which the revenue had suffered. Mr. Cardwell's instructions were too plain for General Carey to misunderstand, and his advisers consented after some delay to satisfy the judgments recorded. On the 1st June, General Carey prorogued the Houses. Clear commands were conveyed in despatches, which reached the temporary Governor. The sophistries which had defended Sir C. Darling were refuted. The collection of duties in anticipation of an Act of Parliament was shown to be constitutional when the usual expectation exists that such an Act will be speedily passed. Sir C. Darling's despatches showed that neither he nor his advisers entertained such expectations. General Carey was informed that "a decision of the Supreme Court is law until it shall have been reversed upon appeal, and that neither the opinion of your law officers, nor the determination of the Executive Government, ought meanwhile to prevail with you against it." Mr. Cardwell acknowledged the difficulties of Sir C. Darling's position, but irregular acts of power were not the proper remedies.

"Anarchy, indeed, may ultimately result from continued opposition between two constituted authorities, each obstinately insisting on its extreme rights. But anarchy has come already, when the Executive Government, entrusted with power for the maintenance of public order and the protection of private rights, uses that power for the purpose of illegally setting aside the authority of one branch of the Legislature, and of overbearing the decisions of the Supreme Court, and depriving the subject even for a time of that which the Court has decided to be his."

Sir C. Darling had been made to urge that he strengthened the position of the Council by the collusive loans which Mr. Cardwell had condemned.

"My observation was equally applicable, whatever might be the political effect of the illegal step. The true interest of everyone who loves free institutions, and appreciates constitutional government, is that no such considerations shall be entertained at all. It is for you to inquire, not whether the result of any step which you may be invited to take will operate in favour of this body or of that, of one political party or another, but whether it is in itself legitimate. If it be clearly contrary to law you will refuse compliance, and will inform your ministers that, while in all lawful matters you are desirous of being guided by their advice, you have a higher and paramount duty, which is to observe the existing law of the colony.

In May, Mr. Cardwell announced that the Hon. H. T. Manners-Sutton would proceed to Victoria as Governor forthwith.

Lord Carnarvon had to deal with the address from the Legislative Assembly, requesting the sanction of the Queen to Lady Darling's acceptance of £20,000. The rule forbidding the receipt of presents by a Governor would be nugatory, he said, if what he "was precluded from receiving might properly be given to his wife." Her Majesty had received the address "very graciously," but could not be advised to acquiesce with it. He hinted that acceptance of the proposed gift could not be "regarded otherwise than as a final relinquishment by Sir C. Darling of Her Majesty's service, and of all the emoluments and expectations attaching to it."

The new Governor opened Parliament in January 1867, saying nothing about constitutional questions or differences. An attempt on the part of the ministry to strengthen their position in the Council had failed. Mr. Henry Miller had accepted responsible office, and was rejected by his constituents. In half the provinces the ministry put forward no candidate at the periodic elections for the Council. That body, however, desired to reduce the franchise, and again appointed a Select Committee which recommended a reduction of the property qualification for members and electors; the addition of two additional members elected by persons professionally and educationally enfranchised, and of a member for the Melbourne University, to be elected so soon as there might be an electoral body of 200 graduates. The report was adopted in May 1867, but conflict between the Houses was then imminent; and though a bill was introduced, it was not read a second time.

Mr. Higinbotham, absent from the conference at which the pretension of the Assembly to be sole grantor of supplies was abandoned, did not rest until he revived it. A Customs Duties Bill sent to the Council (27th March 1867) combined clauses of administration with provisions for taxation. The President, Sir J. F. Palmer, ruled that, under the Constitution Act, the Council might reject but not alter the bill, although the House of Lords might alter the administrative clauses. It would be for the Council to "consider the desirableness of establishing the practice that Money Bills should be Money Bills only, and not include extraneous matters" partaking "of the nature of a tack."

A Committee was appointed to confer with a Committee of the Assembly with regard to the bill itself, and to "the course of proceeding generally with bills, the primary, but not the only, object of which is the imposition of any duty, rate," &c. After discussion, at which no member of the Assembly hinted at a desire to overthrow the agreement made in 1866 as to the form of preambles of Supply Bills, it was "mutually agreed that a progress report to both Houses should recommend that

"inasmuch as doubts have arisen respecting the form or contents of and practice relating to bills required by the 56th section of the Constitution Act to originate in the Legislative Assembly, this House is of opinion that the practice of the Lords and Commons respectively be observed as to such bills, and as to all subjects of Aid and Supply, and that each House be guided in all matters and forms relating thereto by the precedents established by the House of Lords and by the House of Commons respectively."

The Council—unsuspicious that Messrs. McCulloch, Verdon, Higinbotham, and Francis intended to wrest the new resolution, in order to destroy the result of the conference of 1866 formally ratified by both Houses—agreed to the proposal of 1867, and, as requested, amended the Customs Bill and sent it back to the Assembly, where it was to be laid aside in order to introduce a new one, freed from objection. The President warned the Council (22nd May 1867) of the danger of doing "a wrong thing," even on the invitation of the other House. They could not constitutionally amend the bill, and ought not to make the attempt. They might reject it, in order that an unobjec-

tionable bill might be sent to them; or they might pass it, making a special entry in their journals of the exigency of the case, and embodying in a joint Standing Order the recommendation of the conferring Committees as a guarantee "against recurrence of unparliamentary practice." His words were not heeded. The bill was amended and returned to the Assembly.

Committees conferred upon the bill, and (5th June) recommended that it should be considered "strictly a Bill of Aid and Supply, and not alterable by the Council." The Assembly was asked by its own Committee to lay the bill aside and introduce another free from certain provisions objected to by the Council.[39] Without having mentioned in conference the form of preamble agreed to in 1866, McCulloch, Higinbotham, Verdon, and Francis left the conference room with a determination to repudiate that form, under cover of the inchoate recommendation with regard to Bills of Aid and Supply.

Those who have never surrendered their judgment to partisanship may wonder that men of mature years could gravely discuss one thing in conference and as gravely maintain afterwards that another thing was dealt with there. The final report (18th June) recommended that the object of the resolution (sent up in the progress report in May) "should, if possible, be accomplished by means of a joint Standing Order of both Houses, and that each House should cause the Standing Orders to be considered with a view to make them consistent with that resolution."

Mr. Sladen loyally complied with the recommendation. The Council on his invitation (19th June) referred the matter to the Committee on Standing Orders. When that Committee reported (in August), the McCulloch ministry had already sought another occasion of quarrel with the Council, and the suggested joint Standing Order was never adopted, nor even prepared; although in each House divergent recommendations were made as to the form it ought to assume. The Council Committee recommended

[39] The Assembly could hardly fail to see that under this precedent they sanctioned a departure from their own claims, and concurred with an arrangement under which, by a circuitous method, the Council was aided by the Assembly in effecting alterations in a Money Bill.

the adoption by each House of a resolution embodying—one new joint Standing Order, concerning the mode of communicating messages between the Houses; another Order declaring that "The three fair prints of all bills, except the Appropriation Bill, and Bills of Supply, and Tax Bills, shall be presented to the Governor for Her Majesty's Assent by the Clerk of the Parliaments;" and a third declaring that "The bills required by the 56th section of the Constitution Act to originate in the Legislative Assembly shall, so far as regards the subject matter thereof, be framed in accordance with the practice of the Lords and Commons respectively in regard to bills of the like nature."

The Assembly received from its Committee a totally different recommendation as to the suggested joint Order, viz.:—"The three fair prints of all bills except Appropriation Bills and Bills of Free Gift, when passed, shall be presented to the Governor for Her Majesty's Assent by the Clerk of the Parliaments. All Appropriation Bills, and Bills of Free Gift, shall, when printed, be furnished by the Clerk of the Parliaments to the Speaker of the Legislative Assembly for presentation by him to the Governor for Her Majesty's Assent." No other suggestion was made. It was then seen that the Conference Committees had been prudent in doubting whether it would be possible to frame a joint Standing Order which would be more easily interpreted than the Constitution Act. In each House the Standing Orders Committee failed to produce anything which was accepted by its own Chamber. The Committee of the Council bestowed its chief pains upon the framing of Appropriation and Supply Bills so far as regarded their subject matter. The Committee of the Assembly, less loyal to the conference, only dealt with the ceremonial act of presenting bills for the Royal Assent.

The consequence was that neither House prosecuted the attempt to frame the required Order, and the McCulloch ministry, as they could not make new joint Orders, violated those which existed,[40] together with their own compact of 1866.

[40] It is proper to mention that, in a later day, an attempt was made to prove (1877) that the Conference of 1867 resulted in the clear and formal

In two Consolidated Revenue Bills (February and May) of 1867, they had respected that compact. In a Consolidated Bill of September 1867, they reverted to the form abandoned in 1866. The Council asked for a conference "to take into consideration the form of preamble." McCulloch, Higinbotham, Verdon, and Francis then announced that though the form agreed upon, in 1866, had never been mentioned in the conference of 1867, it was present to their minds when they recommended a new joint Standing Order. Mr. Fellows asked whether a "previous compact acted upon" was not to be respected. Mr. Higinbotham thought it "superseded by the agreement, which stated the doubts and difficulties which the conference was to settle."

Mr. Verdon admitted that, in the Revenue Bills of February and May 1867, the compact had been respected; but it "was understood between the learned Attorney-General and myself that . . . it was only pending we used the old one."

A member of the Council interjected that the joint Standing Order suggested by the Council Committee in compliance with the recommendation of the May conference, did not bear out the contention that the preamble, agreed

recognition of the claims of the Assembly. It was stated, and not denied, that the Speaker (Duffy) drafted the reasons adopted by the Assembly. It might seem incredible, except to those who knew him, that he would venture to refer to the abortive efforts of the Conference to procure a joint Standing Order; yet he declared that the Assembly had reason to believe its claim "removed for ever from the domain of controversy." Assuming that others were as ignorant as he was careless about facts, he alluded to the Conference of 1867, but not to its report that a new joint Standing Order was essential, and that existing Orders would need revision to harmonize them with it. A newspaper said that the Council (20th Nov. 1877) tore Duffy's reasonings to shreds in giving a "complete history of the events of which the reasons of the Assembly narrated only the preliminary proceedings," and in declaring that they had no grounds for supposing that the Assembly would "thus endeavour to galvanize into life a project which never reached the stage declared essential to its vitality." Both Duffy and Mr. Berry, the minister of the day, were puzzled; but after a fortnight's consideration, the latter moved resolutions in which it was stated that the Assembly "failed to see the purpose of pertinency of the supplementary narrative furnished by the Council of incidents following the agreement of 1867." But though the Assembly did not shrink from "writing itself down" in such a manner, and passed the resolutions (20th Dec. 1877), they were not sent to the Council.

to in 1866, was affected by the conference in May; and Mr. McCulloch replied: "We cannot help your Standing Orders."

The Conference came to no agreement and made no report.[41] It might seem useless to try to bind by any agreement the men who, after settling the exact words of a preamble, and using them in two sessions, openly abandoned them. The Council passed the bill as it stood. The Houses were soon engaged in controversy on a proposal to pay £20,000 as a reward to Sir C. Darling.

The second deadlock in the colony was the work of the ministry which caused the first. When the recalled Governor despaired of obtaining approval in England he remembered the grant for which the Assembly had prayed the sanction of the Queen, and sought the consent of Lord Carnarvon to an infraction of usage. In April 1867 he elected to relinquish the Queen's service, and accept the proposed grant of £20,000. His determination was made known to McCulloch, who asked Governor Manners Sutton to initiate the grant by message to the Assembly. The Governor, who had induced the ministry to postpone the tender of any official advice on the matter while Sir C. Darling remained in the Queen's service, complied. Mr. Sladen obtained a Committee to search for precedents as to the "usage and practice of the Imperial Parliament with respect to grants of money made under extraordinary and exceptional circumstances." The Committee reported that the aid of the Commons and the concurrence of the Lords were usually invited by message from the Crown; "after compliance with which invitations," subsequent steps were taken to provide separately, or in the Appropriation Act, for the grant proposed. The President, Sir James Palmer, was chairman of the Committee, which furnished cases in confirmation of their report; one signally in point (that of John Palmer), in which the Commons for several years vainly strove to give effect to a grant. The rejection of several bills by the Lords did not lead to the inclusion of the grant in any Appropriation

[41] The notes of the shorthand writer were afterwards printed. Legislative Council Proceedings, 1867.

Bill; and it was not until the claim of right was abandoned by Palmer's friends, and a diminished sum was sought as a boon, that Palmer's Percentage Bill was passed in 1813. In that year there were two bills. When, on the 5th July, the first was thrown out in the Lords, a second, framed to meet their objections, was initiated in the Commons and speedily passed. The fiery Tierney objected to the defeat by the Lords of "the declared sense" of the Commons; but, large as the majority was in the Commons in favour of Palmer, there was no resort to a tack. The Council Committee reported that "a grant to Sir C. Darling, or to any member of his family," could not, according to Parliamentary usage, "be included in the Appropriation Act." The Assembly, undeterred by the Report, sent up the Appropriation Bill (14th Aug.) to the Council. On the 20th its second reading was moved. Every member of the House was in his place. By 23 votes against 6 the bill was rejected, because it did not conform to Parliamentary usage, which forbade the mixing of the grant to Lady Darling "with the general supply for the services of the year," and because "the grant itself is unconstitutional and highly mischievous, and calculated to produce corrupt practices in every department of the State."

An address from the Council explained (22nd Aug.) the events which led to the rejection of the bill. The "form of preamble mutually agreed upon by both Houses" was made known to the Governor; and its abandonment was described as "a breach of the compact then made (1866), and as tending to destroy that feeling of amity between the two Houses which we had hoped had been restored, and would for the future be maintained."

Governor Manners Sutton had the tact which his predecessor wanted. With the ministers who ruined Sir C. Darling, he conducted serious correspondence before he replied to the address of the Council. On the day of the adoption of that address, Mr. McCulloch asked the Governor to prorogue the Parliament, in order that an Appropriation Bill might be considered in another session. The ministry "reserved to themselves liberty to recommend" a dissolution of the Assembly as a last resort. They averred that

the result of the recent election of the Assembly ought to have been final. They had reiterated so often that "the country" meant only one of the two elected Houses that they perhaps believed what they said. They were silent as to the breach of compact which they had committed in abandoning the preamble formally adopted by both Houses, and they charged the Council with refusing to abide by the preliminary resolution which each House had been asked, and neither House had been able, to embody in a joint Standing Order. It was as if a thief, having robbed a traveller, should call upon the police to assist in further stripping his victim. They proposed to satisfy public creditors by an Act enabling them to sue the Crown, concerning which the Governor had previously taught them that he was capable of exercising some discretion. A warrant was put before him, in which his signature was required to authorize payment of a judgment obtained by a suitor under the Crown Remedies Act. Having satisfied himself by inquiry that he was "not only legally empowered, but morally bound to issue the warrant," the Governor warned his advisers (21st Aug.) that it "clearly was not the intention of the Legislature, in passing the Crown Remedies Act, to substitute judgments of the Supreme Court for Parliamentary grants," and that the adoption of such a practice

> "would withdraw the public funds from the control of Parliament, and place them practically at the disposal of the Governor on the advice of ministers named by himself, and no longer restrained by Parliamentary checks which, under Parliamentary government, render Parliamentary supplies a necessary condition for the expenditure of public money, and therefore for the retention of office by any administration."

Parliament "in the aggregate" was concerned, but the Legislative Assembly "most deeply interested in the maintenance of the existing Parliamentary control."

The ministry told him that, so long as ministers were "practically responsible" to the Assembly "invested by law with the sole control of the public finances, the large powers" of the Crown Remedies Act were "not likely to be abused," and that their exercise might be found "essential to the protection of the rights of that Chamber, as well as conducive to the highest interests of the people represented

by it." The Governor replied that, as he had already explained his views, it was "unnecessary for him to recur to it." Nor did he accept their general advice. In his judgment, immediate prorogation would be premature. He "frankly informed" them that he thought it desirable for him to communicate with the rejectors of the Appropriation Bill who had declined to afford funds for the services of the year.

The ministry tendered their resignations. The Governor consulted Mr. Fellows (23rd Aug.), not withholding from him, as Sir C. Darling had withheld, any information as to the state of affairs, but not unreservedly committing himself to accept the advice offered. Mr. Fellows considered that he was by such a course consulted "on an isolated question of law," and not as a constitutional adviser. He also thought that no attempt had been made to "bring the two Houses into harmony." The Governor recognized Mr. Fellows' right to decline "offering advice unless invested with the authority of a minister," furnished McCulloch with the correspondence, and asked his advisers to "regard themselves as occupying the same position" as before the tender of their resignations. They wished him to consult other members, who had rejected the Appropriation Bill. He accordingly consulted Mr. Fraser, one of the majority on that occasion, but usually friendly to McCulloch. Mr. Fraser was supplied with the Governor's communications to McCulloch and Fellows, and informed that the Governor was "not prepared to commission any gentlemen to form a new government without reason to believe that existing embarrassments would be mitigated or removed, and power procured for" meeting in a strictly constitutional and regular manner "the current public expenditure." Mr. Fraser consulted members in both Houses, but in vain. Mr. McCulloch was reinvited to the helm, and again advised a prorogation, with a view to resubmit to the Council the bill already rejected—a Supply Bill for current expenses being asked for, pending the prorogation. It was not until he had accepted this advice that the Governor replied to the address of the Council on the rejection of the Appropriation Bill. He avoided imputations upon any one, but trusted that, "by the exercise of a wise modera-

tion, combined action might be restored to Parliament, and the Executive Government relieved from their existing inability." . . .

The temporary Consolidated Revenue Bill was sent to the Council on the day (3rd Sept.) on which the Governor thus addressed them, and it was disfigured by the breach of faith already recorded with regard to its preamble. By 19 votes against 9 the Conference already mentioned was obtained; but, emboldened by numerical support, and the failures of Messrs. Fellows and Fraser to form administrations, McCulloch and his colleagues cast to the winds their former compact, and complained that the Council would not give effect to the suggestion which both Houses had failed to embody in the requisite joint Standing Order. The conference on the Revenue Bill having made no recommendation, the Council passed it, in "full reliance that the vote which caused the rejection of the Appropriation Bill will not be paid out of the money now to be made available, and in the hope that His Excellency's advisers will not again recommend a course which can only lead to future complications." Prorogued on the 10th, the Parliament met again on the 18th September.

On the 2nd October the Governor in a special message recommended the "Council to concur in a provision for the payment to Lady Darling of the sum in anticipation of receiving which Sir C. Darling" had retired from the service. By 20 votes against 5 the Council refused to concur, on the ground that the English practice of recommending, "in the first instance, exceptional grants, finds no counterpart in a recommendation to the Council of an exceptional grant to which that body has already informed your Excellency it entertains grave objections." They would give earnest and serious consideration to the question, if brought before them "in such a manner as will not preclude" giving effect to their opinions upon it. The Governor replied that, on a matter of "Parliamentary discretion," it was "undesirable that he should intervene in such a manner as would withdraw differences from their proper sphere, and so give them a character which does not naturally belong to them, of a conflict between one or other of the two Houses and the

representative of the Crown." It became known in after years that he "earnestly urged" his advisers to include the grant in a separate bill. They let him understand that they were driven onward by their followers, and could not abide by what was lawful or constitutional. His message was received on the day (16th Oct.) on which the Appropriation Bill containing the Darling grant reached the Council, and was rejected by 20 votes against 5.

The Assembly (29th Oct.) sent up a Supply Bill for £500,000. On the 5th November the Council adopted an address to the Queen, narrating facts concerning their rejection of bills containing the grant which would lead to a "literal or substantial violation of the rule" that a Governor should not receive pecuniary "or valuable presents from the inhabitants of the colony over which he presided, either during the continuance of his office or on leaving it." They could not deal with the grant until Her Majesty might have sanctioned "a departure from the Colonial Regulations," and they prayed for a signification of her pleasure.

The application of the Crown Remedies Act gave significance to the situation. Deprived of the condemned collusive arrangements with a bank, the ministry had resorted to the Act to pay suitors directly, and thousands of actions were brought and satisfied. "Suits brought by persons employed in the public service to recover salaries and wages due will not be defended." Such was the official instruction given by Mr. Higinbotham to the Crown Solicitor. The Governor's warning in August about the abuse of the Act, and his courtesy had not been without effect. Mr. McCulloch (Nov.) admitted that the ministry, while not resisting just claims, ought carefully to abstain "from any step which might tend to substitute, in financial affairs, Executive for Parliamentary authority." The Governor entirely concurred in "condemning any such (substitution) as unconstitutional." He confided in the assurance that none but "liabilities indispensably necessary for the protection of life and property, and to prevent confusion," would be incurred.

The moderating influence of the Governor was necessary to restrain the ministry from courses in which their sup-

porters out of doors were ready to support them. In many places riotous crowds overbore the efforts of constitutional candidates to obtain a hearing. It was accepted as an article of faith that if "an old hat" were placed in nomination by M'Culloch it was the duty of all "loyal Liberals" to support it, and this shibboleth (propounded by a member of a learned profession) was notably adopted in 1867. Probably many who blindly accepted it were unconscious of the tyranny which they were abetting.

The ministry did not resort to the methods of obtaining public money which had been formally condemned in the time of Sir C. Darling, but they eluded the spirit of the law by adroit use of its forms. There was no question that the Crown Remedies Act could be used in enforcing claims which were by law justly due. It was freely resorted to, and a jury, in a defended case, gave a verdict against the Crown early in November. Law officers, Audit Commissioners, and the Governor's advisers accepted the confession of judgment, or the verdict of a jury, as sufficient to make money "legally available." That the transaction was a trick was undoubted, but it seemed unimpeachable, until the violated law avenged its own wrong. The subtlety of the bar overthrew that of the government. By ingenious arrangement a suit was brought—not by nor against the Crown—but of which the issues involved the question whether, without formal appropriation, moneys became, under the Constitution and the Audit Act, legally available to meet a judgment. After reserving judgment the Supreme Court pronounced that a judgment of that Court under the Crown Remedies Act did not of itself render moneys in the Treasury legally available for the satisfaction of such judgment.

This decision, the Governor wrote (27th Dec. 1867), "will of course guide the proceedings of the Audit Commissioners as well as of the Governor for the future." Though unexpected, the result was not regretted by him. On the contrary, he believed that it "reconciled the letter of the law with the spirit of the Constitution." Meanwhile certain liabilities were still met by confessions of judgment.

The marring of their plans did not affect the desire of the ministry to dissolve the Assembly. A dissolution took

place in December. Mr. Fellows resigned his seat in the Council, and was returned to the Assembly by a large suburban constituency, in spite of the hostility of the ministry. Mr. O'Shanassy was elected without opposition to the vacant seat in the Council. Mr. K. E. Brodribb strove to oust Mr. Higinbotham at Brighton, but was defeated by a majority of 90. The victor pointed the moral of the struggle by saying, "I have been told, gentlemen, that I am a disloyal man. Well, gentlemen, I congratulate the electors of Brighton on being also disloyal men." It was, perhaps, partly in consequence of this unpalatable accusation that the speaker was rejected in 1871, when he polled less votes than in 1866 or 1868, and his opponent, Mr. Bent, polled more than any candidate had received before.

The ministry were, however, victorious generally. The Governor represented to the Secretary of State the dangerous condition to which the colony might be reduced by the refusal of the Assembly to include the grant in a separate bill, which he held it might do "without loss of dignity or peril to its privileges," and by the refusal of the Council to concur in the grant if sent up in the Appropriation Bill. The continuance of the struggle would give "immensely increased power to the advocates of extreme democratic opinions, and result ere long in a revolutionary condition of affairs."[42] He rejoiced that "the opposition minorities at the polls" would be large, because the fact would strengthen him in "refusing to accept any illegal or unconstitutional advice if it should be tendered (which he doubted) by the majority. Your Grace will not, however, understand (he added) that my rejection of any such advice, if tendered to me, would be dependent on the prospect of support here." The Governor divined the situation well. Troubles and errors of the past; the mischievous Land Orders mischievously set aside; the subjection of legislation to crowds of gold miners, with no more interest in the country than a robber has in the welfare of the traveller he assails; the unconstitutional example set by the first Haines Ministry; the degradation of the suffrage

[42] Confidential despatch, 4th February 1868, which Sir G. Bowen obtained leave to publish in 1878.

by it, with aid from O'Shanassy, Duffy, and others; the abolition of a property qualification; the shortening of Parliaments; the conduct of a portion of the press—had combined to make the unreflecting accept as a political axiom that, whatever might be demanded in the streets ought to be made law, if only a majority of one could be secured for it in the Legislative Assembly. The other branch of the Legislature, also elected, was to have no voice. The minority, however numerous, who were outvoted at the polls for the Assembly, were to be stifled. They were only to join in paying taxes. This was the unvarnished contention of Mr. McCulloch and his friends.

At this juncture a despatch from the Duke of Buckingham, without enforcing a particular course upon the Governor, conveyed

"the opinion of Her Majesty's Government (Jan. 1868) that the Queen's representative ought not to be made the instrument of enabling one branch of the Legislature to coerce the other, and therefore that he ought not again to recommend the vote to the acceptance of the Legislature . . . except on a clear understanding . . . (and) in a manner (enabling) the Council to exercise their discretion respecting it without the necessity of throwing the colony into confusion."

The ministry, shocked at any question of their supremacy over usage and law, declared that the "form of a Bill of Supply" was "completely within the discretion of the Assembly," and that "the interference of the Crown" in the matter "threatened the existence of responsible government in the country." But the courteous Governor, wiser than his predecessor, seeing the breakers ahead, was ready to do his duty in the storm. When it had passed he was able to write (Aug. 1868) that he had taken no "step which would have identified the Governor with the opponents of the ministry," but that at the same time he had "announced in terms which no one had sought to misconstrue or explain away, that the adherence of a Governor to his instructions is not dependent on the will of a majority, but essential to the connection between the colony and the mother country"—and that he had "maintained this principle." Violent partisans on each side denounced him, but (he wrote in one of the confidential despatches, revealed by a successor) "as the performance of my duties as the representative of the Crown is inconsistent with my identi-

fication with either political party, I must expect that the organs of both should denounce me."

Committed to violent courses, the ministry were abashed by the calmness of the Governor, and determined to throw responsibility on their opponents, hoping that failure would make the Parliamentary minority succumb. Despatches arrived approving of the Governor's proceedings, but regretting the rejection of the Supply Bill in 1867. In one (Feb. 1868) the Duke of Buckingham qualified his previous instructions by saying that, considering all the circumstances, the proposed grant, whatever might be thought of its propriety, was not so unmistakable a violation of existing rule as to "call for the extreme measure of forbidding the Governor to be a party, under the advice of his responsible ministers, to those formal acts which are necessary to bring the grant under the consideration of the local Parliament." The divergence between this despatch and its immediate precursor, which reprobated the recommendation of the grant without a clear understanding that it could not lead to confusion, was noticed by all.

Ere long, Sir Roundell Palmer gave notice that he would move that the Commons regret "that a vote for a grant of money to indemnify the late Governor of Victoria for loss which he sustained by his recall, should have been recommended by a message of the Governor to the Legislative Assembly of that colony with the sanction and approval of Her Majesty's Government." The vacillation of a Conservative minister was about to be atoned for by the patriotism of a Whig. The "loyal Liberals" of the colony, as McCulloch's party called themselves, were to be castigated by one whose loyalty and liberality were real. It was, perhaps, then, that some of the majority began to suspect whither the masters of the plot would lead them. Mr. B. C. Aspinall was interrupted in the Assembly by Francis and McCulloch for saying (June 1868) that if the Darling grant should be made, the people of the colony would be taxed for "disconnection from the mother country." Mr. Francis appealed for protection against the charge of "sedition." Mr. McCulloch called it "infamous," and trusted that Mr. Aspinall would be silenced even if "con-

tinuance in disorderly conduct should render it necessary to expel him." Mr. Higinbotham, prone in theory to what his colleagues disclaimed in practice, inveighed against a system under which a Governor received commendation or dispraise from a foreign nobleman. "An independent sovereign . . . I say (the Governor) is." Unless the Duke of Buckingham should withdraw from his interference, the colony should, as it could, "correct that state of affairs." Till the crack of doom the House should not give way. Sufferings of others in the community were but dust in the balance compared with the supremacy of the Assembly. Unfortunately for Mr. Higinbotham's consistency, a member read an extract from a speech in which, only four years previously, Mr. Higinbotham had said: "As long as Victoria remained a dependency of England—and long might she so remain—so long would they have the English Government intervening between the colony and the Throne. It was impossible that it could be otherwise." Nothing is fatal to the reputation of the idol of the hour. Mr. Higinbotham called *Hansard* a pestilent publication. When the Duke of Buckingham's despatch warned the Governor that he ought not, by recommending the Darling grant, to lend himself to the coercion of one House by the other, the Governor handed it (6th March) to his advisers. They informed him, after some days, that they would "not take any course, submit to any condition, or offer any advice inconsistent with the decision" to include the Darling grant in "the Appropriation Act of 1867." He pointed out that the instructions were only conditional, "and while it would undoubtedly be the duty of the Governor to reject any advice (if such advice should be tendered to him), the acceptance of which would involve a violation of his instructions, that contingency has not arisen." Confident that their majority would enable them in the end to control the Governor and abash the Secretary of State, the ministry resigned, alleging that, though the contingency had not arisen, they were not "justified in assuming" that it would not arise. Not finding the Governor flexible, they resolved to coerce him. He consulted many persons, showing all the correspondence to each. None of them could form a ministry, and

the Duke of Buckingham's vacillating despatch of 1st February arrived early in April and made the confusion worse confounded.

Parliament not having been formally opened by the Governor, he could not, consistently with usage, communicate the despatch to the Houses, and his ministry, holding office temporarily, were unable to advise him. In the dilemma Mr. A'Beckett's agency was informally used to communicate the despatch to members, who responded to his invitation of the whole body of the Council. They who assembled acknowledged the courtesy of the communication, but "declined to express any opinion upon the despatch." Mr. A'Beckett reported (17th April) that he could not form an administration. The public became weary of the delay. The Governor showed no sign of annoyance. On the 20th April he informed McCulloch that he had unavailingly sought to relieve the ministry by consulting members of both Houses; that he had "never sought to impose (on those members) any restrictions on the opinions or conclusions at which they might arrive" with respect to the proposed grant. He had distinctly stated to all that, "while it would be inconsistent with his duty to the Crown to deviate from the instructions" (1st Jan.) of the Secretary of State, yet "he was" prepared, as the representative of the Crown, "to assent to any decision which might be concurred in by the other two branches of the Legislature." He added that the course of his communications led him to the belief that under existing circumstances the Council "would inevitably reject any Appropriation Bill (general) in which the proposed grant to Lady Darling might be included, and that therefore even the abrogation by the Secretary of State of the instructions above referred to would not lead to a settlement of the question." McCulloch insisted that others, and not the ministry, were responsible for the daily multiplying evils, and for "whatever other evil consequences" might spring from them, and repeated the request to be relieved (22nd April). The Governor had many consultations with McCulloch before he formally replied on the 28th April. One of the confidential despatches brought to light in 1878 shows the position in which the Governor stood at its date, the 25th

April. "The simple truth is that the party having the majority is angry because I will not aid them in crushing the minority. And the party in the minority is incensed because I will not regard them as a majority." On the 28th he informed McCulloch that, as that gentleman regarded himself "as unable to offer any advice which the Governor could accept," he had no resource but to "recommence his endeavours to relieve the ministry." The member of the Council who had obtained the conference which terminated the confusion arising from the "tacking" in 1865, procured at this period the signatures of seven members who agreed to vote for the Darling grant in a separate bill without an objectionable preamble.

The Governor considered the information important, but was unable to take steps to meet their views. He was *functus officio* in his executive capacity after recommending a grant, and in his legislative capacity could have no cognizance of a grant till presented to him in a bill passed by both Houses. The form of the grant must be dealt with in the Assembly, or in a "conference between the two Houses" after its submission to the Council in a bill. An administration prepared to recommend Mr. Fraser's views was "preliminarily necessary," and Mr. Fraser was invited to form one. He declined the task (1st May), and Mr. Sladen was invited (2nd May) to form a ministry. He associated himself with Mr. Fellows, Mr. Gillies, Mr. Langton, Mr. Kerferd, Mr. Bayles, Mr. McDonnell, and Mr. O'Grady. No "preliminary conditions or restrictions" were imposed upon him as to the advice he might tender. Messrs. Sladen, Fellows, and Langton were returned by their constituencies, but the retiring ministry were able to secure the defeat of Mr. Gillies, whose debating power they dreaded. The man chosen to oppose him was an adventurer, who had been an ardent free-trader until he saw that a majority was in favour of protection. Eventually he was expelled for receiving bribes.

The Governor opened the Parliament on the 29th May. His speech made no allusion to the Darling grant, but paid a compliment to the public spirit and patience exhibited by the community during the "deplorable state of affairs" resulting from the "absence of the usual Appropriation Act."

A cowardly act of an assassin, who shot Prince Alfred in the back near Sydney, had evoked loyal sympathy, which annihilated for a time even political contention, and combined men of all opinions in demonstrations of loyalty at the time of the meeting of Parliament. But it did not slacken the energy with which McCulloch strove to regain office, and make amends by money for the disgrace which he had brought upon Sir C. Darling, to whom he proffered the appointment of Colonial Agent in London in case Her Majesty should determine that, while Sir C. Darling remained in the service, his wife could not receive the £20,000. The Council responded promptly to the Governor's speech; the Assembly on McCulloch's motion demanded the removal of the Governor's new advisers, and that the grant to Lady Darling should not be included in any other "form of legislative enactment than that already determined by the Legislative Assembly—the Appropriation Act of 1867." Professing loyalty, the address assailed the Duke of Buckingham's interference as a dangerous violation of the rights of the Assembly. Professing pity for public servants who were starving, it declared that they might continue to starve until the faith of the Assembly, pledged to an improper grant, should have been kept. The Parliamentary struggle may be briefly described, though it was protracted. The Governor, in replying to the address, was sure that the Assembly did not desire him "to violate the conditions on which" he held his trust. He had not been instructed to interfere with, and felt that the Assembly would acquit him of having "shown any desire to interfere with," their constitutional rights. He was ready to acquiesce in the settlement of the Darling grant question, "no matter on what basis," in the only lawful and constitutional manner, "namely, by the concurrence of the branches of the Legislature." He had resorted to his existing advisers only when their predecessors had absolutely and repeatedly resigned. He could not ask for supplies except through a minister, and he earnestly hoped for a restoration of co-operation between the Houses.

McCulloch demanded that the House should meet on the following (not a sitting) day, in order that it might be informed if the ministry intended to propose the Darling

grant, and include it in the Appropriation Bill for 1867. The House obeyed. Mr. Fellows, whose geniality gained respect, but not votes, said he was asked whether he was prepared to adopt a course which the previous ministry "would not enter upon." He would not support the inclusion of the grant in the Appropriation Bill; but, if the House desired, would recommend it in a separate bill. McCulloch moved an address (8th June) praying the Governor to dismiss his ministers. They had become "a calamity." Mr. Fellows' concession was of little use. Mr. Duffy and Captain MacMahon, though voting with the ministry, carped at them in speech. The reason leaked out during a speech by Duffy. If Mr. Fellows when asked to form a ministry had acted properly, Duffy's "honourable and gallant friend, Captain MacMahon, might have been sent for, and he probably would have succeeded." McCulloch's motion was carried by 45 votes against 14. The Governor courteously pointed out that the suspension of public business and public payments had existed before his ministers took office, that he had not removed their predecessors, nor had those predecessors retired at his instance. "I am not informed that the removal of my present advisers would result in that legislative co-operation without which any government must be powerless." He was assured by his advisers that if such a result could be secured by the formation of a new administration they would resign forthwith. The majority in the Assembly strove to prevent the ministry from making a financial statement. They dreaded the Treasurer's ability, and they wished to storm his (Langton's) position. McCulloch moved suspensions of Standing Orders, and ostentatiously assumed control of the House.

The mark aimed at was openly avowed, viz., by forcing "the Darling grant" into the Appropriation Bill of 1867; to bring the Governor and the Secretary of State under the heel of authority; to inflict (Mr. Higinbotham said) "a censure upon the Executive Councillors" who had petitioned the Queen; to remove all obstacles to the exercise of arbitrary power by one House, which should be able to tax at will and imprison without question. A base motive was already not only suspected, but whispered about. Thrice

(1861, 1865, 1867) had a bill for payment of members of Parliament[43] been rejected by the Upper House. When Mr. Fellows said (9th June) that by passing the Darling grant in a separate bill the honour of the country, which members talked about, would be redeemed, he was met by cries of "No," and one member said, "There is something underlying it." "I believe (he retorted) something does underlie it. Probably £500 a year does." No man attempted to gainsay him. The opposition, led by McCulloch, carried an address (24th June) praying the Governor to recommend the Darling grant "as the same was recommended . . . and granted by the late Legislative Assembly." Higinbotham declared that one penny more or less than the £20,000 would tarnish his victory. He must have the bond and the bond only, as demanded in the lost bill of 1867. The Governor (26th June) replied that if the solution of difficulties could be obtained in the ordinary manner by change of advisers he would at once call upon one of the majority to form a ministry. But the crisis was abnormal. His late advisers had informed him of the hopelessness of an attempt to resubmit the lost bill. His existing advisers concurred. He was ready to give effect to the wishes of the Assembly when advised of the probable concurrence of Parliament. McCulloch described the Governor's message as extraordinary, and (29th June) moved a rejoinder, in which passion prevailed so far as to assert that the Assembly had not informed, and did not propose to inform the Governor that the Appropriation Bill of 1867 would be re-submitted. The discrepancy between this statement and the former address to which the Governor had replied was exposed, but McCulloch carried his resolutions. On the following day the Assembly resolved that the retention of office by the ministry was injurious to the Crown, repugnant to the Constitution, and in "malignant antagonism" to responsible government. The patient public saw these things in wonder. The Governor (2nd July) was advised to say in response to the two violent addresses,

[43] Though Sir Henry Barkly's influence had prevented his ministry (Heales') from making the question a *casus belli* between the two Houses, it had not slumbered. £500 a year for each member was proposed in one of the bills.

that he believed he was "giving practical effect to the wishes" of the Assembly by recommending them to provide for the payment of £20,000 to Lady Darling. Mr. Sladen deprecated discussion in the Council lest it should mar the prospect of peace. Power had not been confined to members of McCulloch's ministry. It was sporadic among their followers. By grants for local works, appointments of friends of local intriguers, and kindred means,[44] the Treasury had become a storehouse for rewards. The administration of the public lands was of like character. If payment of members would have stayed the plague it would have been well to commute a greater evil by sufferance of a less. But no salary was needed by the honest, no bribe could lure others to become pure. On the 3rd and 6th July hot debates ensued in the Assembly. The majority had insisted on £20,000, but they discovered that it was a breach of their privileges to deny them the right to "put (Mr. Higinbotham said) £20,000, £50,000, or £100,000 into any Supply Bill." Mr. C. G. Duffy proposed to move that "a dissolution of Parliament under existing circumstances would be an unprecedented and unjustifiable exercise of the Royal prerogative." The harassed ministers were to be "trampled by the abject rear" as well as o'errun by their competitors. But a message of arrest was on the way. Sir Roundell Palmer's notice of motion for the 12th May (of which intimation had reached the colony early in June) had purified the atmosphere. By sea and throbbing electric current the tidings came in time to stay proceedings. The alarmed Sir C. Darling told the great lawyer that it was impossible to censure the Conservative Government, as proposed by him, without involving injustice to Darling. A committee of inquiry ought to be sought by Sir R. Palmer. The latter

[44] A highly respected, wealthy, and benevolent man was a candidate for a seat in the Assembly. "We know, Sir," said a farmer to him, "that you are the fittest person for making laws and that sort of thing. But we want a man that will take a £5 note to do a job for us, and you would not do that, and Mr. —— will." Mr. —— was elected, and became Minister of Lands, wielding an engine capable of ministering to corruption. The patriotism of the rejected candidate was rebuked, but his kindness was not extinguished by defeat. Before leaviug the colony soon afterwards he gave £1000 to a hospital in a neighbouring town.

disclaimed any view personal to the recalled Governor; but could not qualify his motion (postponed for a time).

"The principle I desire to maintain is, that grants of money to retiring Governors of colonies by Colonial Assemblies (unless proposed with the spontaneous approval of the Crown on grounds of public service recognized as exceptional and meritorious by the Crown as well as by the Assembly) are not only inconsistent with the regulations of the service but are subversive of the true relations between the colonies and the British Empire, and ought under no circumstances whatever to be allowed."

Sir C. Darling acknowledged the "courteous and considerate tone" of his correspondent, and on the 14th May sent the correspondence to the Colonial Office, and expressed his readiness to withdraw his "relinquishment of expectations connected with the service" (though he was ready, as before, to abide by the "result in the Legislature of Victoria"), under the "assumption, I need scarcely say, that the power of the Crown will not be further interposed to my disadvantage." His "relinquishment of the service" was, he "emphatically" declared, suggested to his mind by a letter from Downing-street in 1866. On the 19th May, while the colony was convulsed by his affairs, he was told that the Duke of Buckingham presumed that he was to understand that the relinquishment of service was made under "misapprehension." In that case the Duke would not hold him bound to his decision. But the withdrawal of it must be "absolute and unconditional," and if entertained at all must be made at once. There was no time for reference to evil counsellors. No telegraphic wire then reached the south. On the 21st May, learning that he had been under misapprehension, Sir C. Darling asked permission to withdraw his "relinquishment on the ground that it was made under the misapprehension referred to." On the 22nd permission was granted, and he was informed that it would be necessary for him to write to Sir J. H. Manners Sutton to intimate his inability to accept himself "or by Lady Darling the proposed grant of £20,000." On the same day the Governor of Victoria was informed by the outgoing mail that Sir C. Darling had re-entered within the pale which prohibited the acceptance of the grant by Lady Darling. The vessel sped safely with the despatch. A telegram to Alexandria was sent from Downing-street on the 28th May, and a consul transmitted it by the mail

steamer to the Governor of Victoria in these terms: "Since my despatch of the 22nd May, Sir C. Darling has written to declare his inability under the circumstances to accept the proposed grant either himself or by Lady Darling." On the 7th July the Governor communicated the despatches in full to the excited Houses.

A stranger might have expected universal joy at the cessation of strife. But wounded spirits[45] which longed for triumph would not be comforted. On the 8th July Mr. McCulloch, by 45 votes against 19, carried a resolution withholding supply until the ministry could be expelled. They resigned immediately; and McCulloch returned to office with a different band from that which quitted it with him. Mr. Higinbotham would not consent to terms which did not pass the British Empire under the Caudine Forks. Mr. Francis would not associate himself with one or two of those with whom McCulloch linked himself. Six new names appeared in the ministry. Mr. Verdon, anticipating a general desire for posts in the Cabinet, had gone to England as Agent-General. The Officials in Parliament Act prohibited his acceptance of the post until six months might elapse after resignation of his seat. But a ministry which had violated many Acts was not restrained from breaking another, although with mock deference to form, the assumption of office in London was postponed so as to approach the lawful time; and the colony paid its emissary during the interval of travel. The Darling grant appeared no more. The retiring minority assisted their successors to procure supplies, and within two days of M'Culloch's resumption of office, both Houses passed, and the Governor assented to, a bill which legalized payments of nearly two millions sterling; £1,200,000 of which were (according to the Governor's statement) devoted to "undisputed claims

[45] Amongst these Mr. Higinbotham (too amiable to desire to injure any one unless to serve a political purpose) must be included. The equally amiable Mr. T. T. A'Beckett hastened to congratulate him on the happy termination of the crisis. They were in public view on a railway platform. "Are you not delighted?" said the Councillor. He shrank back from the countenance by which he was confronted. In deep emotion the adviser of Sir C. Darling ejaculated: "Mr. A'Beckett, I can't speak to you," and moodily turned away. "Can you understand this?" said Mr. A'Beckett to a friend. "Quite," replied he; "and also that you do not understand it."

awaiting satisfaction." The Council passed the Revenue Bill, and the subsequent Appropriation Bill (for 1867, 1868, £4,796,911 19s. 7d.), recording their protest against the violation of the compact mutually agreed upon by the Houses in 1866, as to the form of preamble to be thenceforward used in such bills.

The relations between the two Houses were considered in the Council, while the brief Sladen ministry was in existence. A Select Committee was appointed (30th June) to report on the "subject of altering and amending the Constitution." Mr. Fawkner had come to the conclusion that the right of amending Money Bills, existing in the second Chamber in America and in British colonies, was necessary in Victoria. The Select Committee recommended a joint committee of both Houses. The Council sought (20th Aug.) the concurrence of the Assembly. The latter body (after a silence of weeks), on the motion of McCulloch, declined to accede to "a method of legislation unknown to the British Constitution," which required bills to be completed in one House, and "transmitted to the other for consideration when so completed." The Council had before it a Draft Bill (to alter its own electoral basis) reported (26th Aug.) by its Select Committee; and on the day (15th Sept.) of refusal by the Assembly to co-operate, that bill, on which Mr. Sladen had bestowed much care, was read a second time. While finally dealt with, it lost his supervision. The defective provisions of the Electoral Act deprived the Council of several members at a critical time. The periodic elections, held every two years for one-fifth part of the House, had been (under advice of different law officers) held at incongruous times. As the Governor issued the writs the matter was beyond the purview of the House. If a law officer deemed that a new writ could not be issued until the old member's seat had been vacated, it followed that one-fifth of the House might be wanting for many weeks.

Mr. Sladen's bill remedied the defect by providing that the President of the Council should issue the writs; that elections in each province should be held on the anniversary of the first election in 1856; and that the writs might be issued in anticipation, so that on no day might the House

be deficient in number. He provided for a member for the University, but there was a jealousy of a representative of learning, and the clauses were rejected. Mr. Sladen no longer sat in the House when his measure was completed. The divergent opinions of law officers about former writs rendered his term of office doubtful, and he ceased to attend after the earliest day on which it could be supposed to lapse.[46] But the bill passed through the Council. The reduction of the qualification of electors from £100 to £50 annual value, and the maintenance of the rated value as the standard, enlarged and purified the rolls.

It seemed as if the measure would be lost when it reached the Assembly only four days before the time of prorogation. Mr. Higinbotham urged that by increasing the number of

[46] It is proper to notice in his case the obloquy which a man might encounter for telling the truth. The amount of Customs duties for which Mr. Francis took no bonds in 1865 was £63,000. Mr. Sladen was reported to have publicly designated the suspension of the law as a fraud upon the revenue by which at least one of the ministry profited. Mr. McCulloch corresponded with him on the subject, and denied in the Assembly that he had made "one penny by the transaction." "The statement made by Mr. Sladen is untrue, and he must have known it to be false when he made it." A member pointed to a return showing that £667 appeared as uncollected duties opposite Mr. McCulloch's firm. McCulloch replied that it would be found that the money was paid by the firm when "the bonds were called up. What then becomes of the charge?" On the following day Mr. Langton asked whether the uncollected duties of 1865 had "since been paid into the Treasury." McCulloch had discovered that though his firm had paid upon bonds, they had not paid the dues which Mr. Francis had illegally remitted altogether. He confessed that in his previous reply he had "confused the two amounts." He produced a memorandum from a partner affirming that because the goods unlawfully passed through the Customs had been sold to "buyers at prices which included the reduced duties"—"the profit, if any, was made by the customers instead of by the firm." McCulloch boldly repeated that the charge against him was "falsely made," although on goods cleared by his firm £667 were still due to the government. Mr. Sladen's last words in the session (13th Aug.) were: "The admissions made by Mr. McCulloch show that my allegation is perfectly true, and that at the present moment he is a debtor to the revenue of the colony to the amount of £667 6s. 8d." The revenue never received any of the £63,000 in question. The subject vexed the soul of Mr. Higinbotham, who accused Sladen of "unparalleled meanness" and "falsehoods" in alluding to it. Mr. R. Murray Smith (*Australasian*, 11th May 1895) pointed out that "the next day (McCulloch) frankly stated that the statement was correct, and that he himself had been in error, not, of course, intentionally." It would be vain to analyze the eccentric demeanour of Mr. Higinbotham towards Sladen. It almost seemed that the attributes which commanded the respect of others embittered the animosity of Higinbotham.

electors "you give additional force—or you give some force —to the argument that the Council is a representative body. You so far deprive it of, I will say, almost the contempt of the community for it as a representative body, to which, happily, it is now subject." Public opinion was perverse in uniformly reviling and censuring the Assembly —the only House "ever criticized harshly and unjustly, not merely by its avowed enemies, but by its mistaken and misjudging friends." Each member must judge the bill for himself. He did not "entertain a shadow of belief that it was honestly presented" to the Assembly with a desire for harmony, and could not "personally vote for it." It became law (29th Sept.), and so great was the fraudulent corruption of the existing electoral rolls that, after a reduction from £100 to £50, there were some districts in which the application of the rating test decreased instead of augmenting the lists. The general result was in a short time to raise the electorates 200 per cent. By multiplying the supporters of the Council throughout the colony, and increasing the interest of the public in its proceedings, Sir C. Sladen had laid the foundation of a senate based upon the intelligence and successful industry of the population, and it was mainly due to his exertions that in a later year the franchise for the Council was more widely extended. The Governor's closing speech in 1868 trusted that the new law would "operate beneficially."

He was too sagacious to presume that the extinction of the Darling grant controversy had banished strife. He wrote confidentially:—"The political differences and party animosities which aggravated and intensified that controversy have not been extinguished." He left the colony in March 1873, and his successor, Sir G. F. Bowen, arrived in Victoria in the same month.

CHAPTER XIX.

PAYMENT OF MEMBERS.

The surmise that under cover of enthusiasm for Governor Darling some members masked their advance to the principle that by their sole vote they might help themselves at will from the treasury was no vain imagination. They who deemed that payment of members of Parliament was not in itself popular, flattered themselves that if the question should become crucial the seekers of payment would be rejected at the poll. It was not foreseen that the utility of a member to those who secured his election would bind them to him for general uses, although they cared little about payment of members. So far as public opinion on the question had been tested on a cognate principle, it was adverse to payment. The municipal law had provided that the first meeting of householders and landowners in a district should decide whether the municipal councillors "shall or shall not receive any pecuniary compensation." Throughout the whole territory, as municipalities had been formed, this question had been decided in the negative. There was one important difference as to application of the principle. Municipalities would have to pay their members out of local funds, as members of Parliament were, of old, paid in England. In the colony the treasury was to be sacked. If a member would sometimes rifle it on behoof of his constituents they would allow him to rifle it for his own. The Assembly passed bills on the subject. In June 1861 the Council put aside a bill to provide £300 a year for each member of the Assembly. Mr. Heales and his colleagues (Brooke, Verdon, Grant, and others), in appeal-

ing to the constituencies in 1861, announced that the amount which the Assembly might decide upon would be inserted in the Appropriation Bill. The Council, in their address to the Governor (Sept. 1861), hoped that the subject would not be brought before them in a manner which "would preclude the possibility" of their passing the Appropriation Bill. It became known that Sir H. Barkly declined to recommend an appropriation for payment of members except in a separate bill, and his ministers submitted. Mr. Duffy taunted them in the House for having been governed by the Governor.

In 1865, 1867, 1868, and 1869 the Council threw out bills for paying members. In 1870 McCulloch was again in office, and Mr. Francis was Treasurer.

The tradition of Sir H. Barkly's name restrained clamourers for payment from resorting to the Appropriation Bill as the engine with which to extort it. Only a separate bill appeared available, and to propitiate the Council it was resolved to ask for an experimental measure, limited in duration by its own provisions.

Mr. Highett (a member of Conference Committees in 1866 and 1867) moved that a Conference Committee of seven members be appointed to confer with a like number of the Assembly on "certain amendments." He wished to exclude members of Council from the provisions in the bill. Some members, indignant at the breach by the Assembly of the formal agreement of 1866 (about preambles), declared that they would have no conferences. Let the bill be rejected. They thus defeated Mr. Highett, and helped to pass the bill which they opposed.[1] Its title was euphemistic

[1] The division which in its consequences entailed so much misery upon the colony may perhaps be given.

Fifteen Ayes.		Ten Noes.
R. S. Anderson.	J. Graham.	J. O'Shanassy.
T. T. A'Beckett.	J. Cumming.	Niel Black.
G. W. Cole.	R. Turnbull.	T. McKellar.
H. M. Murphy.	P. Russell.	W. Skene.
B. Williams.	W. H. Pettett.	J. F. Strachan.
C. J. Jenner.		N. Fitzgerald.
Dr. Hope.		J. Henty.
A. Fraser.		W. Degraves.
F. Robertson.		W. Highett.
W. A. C. A'Beckett.		W. Campbell.

—"to provide for reimbursing members their expenses in relation to their attendance in Parliament."

Much pressure had been brought to bear upon the Council in 1870. The *Argus* newspaper implored them to pass the bill. In a few years it urged them to undo their work by refusing to renew it. A keen observer (Anthony Trollope) who was in Melbourne in 1872 marked the operation of the original Act. "Whether it will be renewed not a few in the colony profess to doubt. . . . I have but little faith myself in the moderation of a dog that has once tasted blood, and do not believe that the members of the next Parliament will be endowed by so strong a spirit of patriotic martyrdom as to abandon, by their own act, the salaries which they will then be enjoying."[2] Before the expiry of the Act Mr. Duffy had been the head of a ministry with Mr. Berry as his Treasurer. Duffy threw the latter overboard in May 1872, but the jettison did not right the ship. Mainly in consequence of abuse of patronage, and "disingenuousness," Duffy was driven from office in June 1872.[3] Mr. Francis succeeded him, taking as

[2] "Australia and New Zealand," vol. i., p. 508.

[3] Duffy's disingenuousness extended from the colony to Europe. Calling himself a free-trader, he made the Victorian tariff more largely prohibitory under the name of protection, in 1871. Afterwards he publicly (1877) averred that in 1866 John Bright and J. Stuart Mill told him in England that he might, in their opinion, honourably "come to an agreement with the protectionists," and become a member of a ministry with them. Mill was dead at the time, but John Bright on being appealed to declared that though he had seen Duffy in England in 1866, he had said nothing of the kind imputed to him, and that he was "greatly surprised that anyone in the least acquainted with me or with my life should have supposed it possible that I could give it my support. . . . I may say with confidence that my views have been entirely misunderstood and misrepresented by Sir C. Duffy." On the same occasion (1866) Duffy lamented to Thomas Carlyle the fact that "universal suffrage had made all government—that is, all good government—impossible in the colony." When head of a ministry subsequently, he denounced all checks (of registration, &c., &c.) as frauds upon the grand and sacred principle of universal suffrage. Another visitor to England (1874), asked by Mr. Carlyle whether Duffy's tale of 1866 still held good, remembered Duffy's subsequent conduct, and replied: "Well, Mr. Carlyle, since Duffy told you that story he has been the head of a ministry in Victoria, and in that position he lauded universal suffrage as corrective of all evils, and denounced as a fraud upon it a provision that ratepayers in arrears should be struck from the roll, because, though they could still take out electoral rights for a shilling, they were not transferred wholesale from the municipal to the Parliamentary electoral roll, as was the case with all who had paid

colleagues Mr. Gillies and Mr. Langton, who had been eminent in resisting in Parliament the acts of McCulloch, Higinbotham, and Francis in former years. Mr. Wilberforce Stephen, who had been, out of doors, the vehement opponent of the McCulloch ministry at the same periods, became Attorney-General, and it might have been hoped that there would be moderation in the ministry, although several of McCulloch's former friends were in it. But power corrupts even kindly natures; and the temptation to grasp it appears irresistible in many minds. Because an Electoral Bill was laid aside by the Council in August 1873 the ministry were furious, and railed at the President (Mr. W. H. F. Mitchell), who ruled that laying aside a bill was final, as had been ruled in 1865. In proroguing the Parliament, the Governor, Sir G. Bowen, lamented the conduct of the Council. Accepting the position of Sir C. Darling rather than of the more politic Governor Manners Sutton, he trusted that the questions on which the Houses had been "unable to concur" would be "settled by the opinion of the constituencies" (not of the two Houses, but) of the Assembly at the ensuing elections. Mr. Francis professed to adopt the "Norwegian system" of producing accord between the two Houses, but his method of adopting it was as if a man were to break a finial from a Gothic cathedral and declare that he carries the building in his hand. In Norway, a restricted suffrage elected, by indirect process, members of one body, the Storthing. That body resolved itself into two—the Lagthing and the Odelsthing. If the two should differ they could be called together to decide by a mixed majority the disputed matter. But the original constituency having been one in Norway, and the electing constituencies of the two Houses having been different in Victoria, Mr. Francis' contention that he was adopting the Norwegian system was worse than idle. There

their rates." Mr. Carlyle raised his eyes in wonder. One of the company said to the visitor when the host (Carlyle) was absent: "Did you know that Duffy was a friend of Carlyle's!" "I did," was the reply, "and I thought it the more necessary to let him know the truth about him. It is intolerable that he should come whining to Carlyle with complaints against the evils of ochlocracy, assume a high moral tone to please a great man, and immediately return to the colony and strive in office to intensify that which he had professed to lament."

was no manhood suffrage in Norway. No one under 25 years of age had a vote. The qualification was composite, but high.[4] The voters chose deputies. The deputies afterwards chose the members of the Storthing. In case of vacancy of seat there was no new election of a member, but the man who had been next to the successful member at the previous election took the vacant seat in the Storthing. For such a body, when resolved by its own act into two, to be united again for a special purpose was no violence to Lagthing or Odelsthing. The joint-sitting in Norway tended to harmony; the proposed sitting in Victoria was fraught with discord.

At the elections bitter words were spoken against the Council by members of the ministry, who returned with a majority. Sir G. Bowen informed the Parliament in May 1874 that his advisers regarded the response of the constituencies of the Assembly as "unequivocal" on the question of Reform, but the propounded scheme never reached the Council, having failed to obtain an absolute majority in the Assembly. Mr. Francis retired. The ministry was modified by the recession of Mr. Langton, and the admission of Mr. Service as Treasurer, Mr. Kerferd, the Attorney-General, becoming the head of the Cabinet. For reasons unrevealed, the ministry afforded facilities for the renewal of payment of members. Before the retirement of Mr. Francis, a Mr. W. C. Smith, known in former days as a broker at land sales, succeeded by 31 votes against 24 in carrying an address praying the Governor to take the necessary steps to renew the bill; and he was supported by three ministers. Mr. Higinbotham, maugre his placarded hostility to such a bill, voted with Mr. Smith in the division which by so narrow a majority led to future strife. There were secret conferences, and the measure eventually passed the Assembly under the title of a bill "for the continuation of an expiring law." Its one clause revealed no more of its purport than the

[4] A House of Commons Paper (C 3665) of 1883 shows that in 1879, when the population of Norway was 1,904,600, only 99,554, or about 5 per cent. of the population, formed the electorate. Five years' residence was required. In Victoria, according to "Hayter's Year Book," there were (in 1880) 207,000 registered electors for the Assembly out of a population of 860,000—or about 25 per cent.

title. The third reading was carried by 35 votes against 18. A deadlock was anticipated in the event of a refusal by the Council to pass the bill. One member's concise reasons for opposing the measure may be recorded. The principle of paying representatives was bad. The practice had been prejudicial. Lastly, he had promised to vote against it. Postponement for six months was rejected by 12[5] votes against 11. It was believed that the absent members of the Council were opposed to the bill, and the casual majority present pushed it forward through all its stages, lest in a fuller House the third reading should be lost.

Neither in 1870, when it first passed the bill, nor in 1874, when it renewed it, had the Council the advantage of the presence of Mr. Fellows or Mr. Sladen. The latter had visited Europe. Mr. O'Shanassy had quitted the Council. The influence which Fellows and Sladen had wielded was not one of control but of co-operation. They placed their ability and diligence at the disposal of their fellow-members, who thus found spokesmen of their views. Out of doors the truth was not understood, and O'Shanassy, impressed with a sense of his own importance, was indignant at finding himself unable to command those whom he erroneously supposed to have been commanded by others.

It was customary for its enemies to brand the Council as a selfish body representing only interests of squatters and landowners; but though it contained in 1856 eight pastoral tenants of the Crown the number in the House rapidly diminished. Practically, pastoral tenancy was extinguished when free selection without previous survey became law; and sufferance became the badge of the tribe in whose hands Earl Grey's Orders in Council had once placed lands in the "squatting" districts. The "thirty tyrants" whom McCulloch and Higinbotham, and after them Mr. Berry, denounced as irresponsible, were a peaceful collection of middle-aged and old merchants, professional men, and

[5] The twelve were :—Mr. Anderson, Captain Cole, Messrs. Cumming, H. Cuthbert, W. A. C. A'Beckett, T. T. A'Beckett, Dr. Dobson, T. F. Hamilton, C. J. Jenner, F. Robertson, J. A. Wallace, and Sir F. Murphy (late Speaker of the Assembly).

others, whom only violent measures could goad to resistance.[6]

Attacks upon them were resumed by Mr. Berry. Duffy had made Mr. Berry Treasurer, but had got rid of him in May 1872. In 1875 Mr. Berry was accepted as the leader of those who had transferred to freeholders the antipathy which had been fastened upon the squatters, or pastoral tenants of the Crown, under Earl Grey's Orders in Council.

Free selection under Duffy's Land Act of 1862 had been fruitful of evils. Many selectors merely acquired freeholds in order to sell to others; and neighbouring proprietors were often the purchasers. Moreover, it was acknowledged that many selectors were mere agents ("dummies") for neighbouring proprietors who provided means for making the periodic conditional payments which were necessary before the selector could apply for and obtain a title on payment in full of the dues to the Crown.

The unpopularity of the squatter thus devolved upon the freeholder. "By sorcery," his enemy would say, "he got this isle." Thus special causes sharpened the envy borne by the envious towards the frugal. Until industry shall cease to win its rewards, the time cannot come when the bray of an Aniello will fail to find an echo in the streets.

Legislation in Sydney and in Melbourne in 1861 and 1862 aimed nominally at creating an industrious yeomanry. It had failed, and many of its promoters attributed the failure to the wiles of those who opposed the legislation. Meanwhile the agriculture which refused to be created by law was planting itself steadily on the soil, not by artificial aid but by natural process. Some legislators cared less for that process than for injuring their neighbours, and they conceived the idea that if they could not create a class of

[6] In 1878 the Council appended to a statement sent to the Colonial Office the following summary of its component parts: "Six owners of large country estates, seven owners of smaller properties (two of these are pastoral tenants of the crown). Seven merchants and shipowners, two barristers, two solicitors, one brewer, one auctioneer, one banker, one farmer, one mining proprietor, one broker." Out of 5500 votes, polled at an election in 1878, 3486 were given by bakers, butchers, drapers, merchants, licensed victuallers, bootmakers, and others of different occupations. This fact the Council published.

small farmers they might prevent the existence of large freeholds by a special tax on large holdings.

These ideas were floating in the community in 1875, when Mr. Berry was entrusted by the Acting Governor with the task of forming a ministry on Mr. Kerferd's retirement. Singularly enough, Mr. Berry had recently moved a hostile resolution, but had been defeated by 32 votes against 22, and might therefore have been deemed ineligible for the task of leading the existing House.

At this point it is desirable to glance at the Royal Colonial Institute. A letter from three of its members furnished an occasion on which Mr. Higinbotham induced the Legislative Assembly to pass (1869) resolutions tending to sever the colony from the Empire. Whether the superciliousness of Earl Granville, the want of patriotism of others, or the craving of nobler spirits for some purer air than was engendered by Downing-street and by local contentions, wrought out the formation of that Society, or whether these co-operated with other causes, the time had come when patriotic Englishmen at home and abroad could provide at the heart of the Empire an organization through which the national pulse could beat, with forces gathered from every quarter of the globe where the flag of England had been unfurled.

In 1868 a number of gentlemen discussed in London the means of arresting the current which, under the specious names of liberality on the part of Mr. Gladstone's ministry, and philosophy on the part of others, tended to sweep from their moorings the various State vessels which formed the fleet of the Empire. The originators of the little Colonial Society[7] struck a responsive chord. Their meeting of 1868 led to an inaugural meeting in March 1869, which had been preceded by an inaugural banquet (10th March), at which Mr. Gladstone and Lord Granville breathed fervent aspirations for that United Empire which they had been openly accused of betraying. At the banquet were Viscount Bury, the first President, the Duke of Manchester, the Marquis of Normanby, Sir Stafford

[7] In 1870 it became by Royal grace the Royal Colonial Institute; the latter term being adopted to prevent confusion of initials with those of the Royal College of Surgeons.

Northcote, Mr. Reverdy Johnson (U.S. Minister), Sir J. Pakington, and many colonists. Mr. Gladstone proposed the "Prosperity of the Colonial Society." No man unacquainted with his versatility could have supposed that his fervid devotion to "the great and noble tradition of the unity of the British race," expressed feelings which had been to him exotic until they found congenial soil in other men's minds.

The Marquis of Normanby repudiated the views of those who desired "that the connection (of England and the colonies) should cease." Earl Granville dilated upon the reorganization "of the Order of St. Michael and St. George," of which it would be his "humble duty to maintain the honourable character." Sir C. Nicholson (so long the Speaker in Sydney) augured well from the gracious intention to confer titles of honour on colonists, and "deprecated the mischievous speculators who would have a severance of the colonies from the parent state." Sir C. Clifford (long the Speaker in New Zealand) said there was without doubt a feeling in England, though not at that board, that the colonies were "not essential to the welfare of the mother country." The colonists were of a different opinion, and to retain their sympathy it was necessary "that their feelings should not be maligned."

At a subsequent meeting Viscount Bury denounced efforts "to dismember the Empire," and Sir C. Nicholson, "in common with the colonists present, repudiated and rejected with indignation the doctrine and the influences of the school" of Goldwin Smith and his abettors.

The Royal Colonial Institute may be glanced at hereafter. At present it is instructive to observe in what manner its movements were scrutinized in that colony which Dr. Lang commended to Duffy as the most apt for the designs of those who longed to rend the Empire. Three gentlemen, Mr. J. A. Youl, of Tasmania, Dr. Sewell, of New Zealand, and Mr. Blaine, members of the Institute, had urged the holding of a conference in London, "on the present state of relations between the mother country and the colonies."

Mr. Higinbotham saw danger in the scheme. He moved resolutions (2nd Nov. 1869) declaring the "care of the political rights and interests of a free people" proper for

themselves. His second resolution desired that Victoria should "remain an integral portion of the British Empire," with an obligation to defend itself from "foreign invasion." His speech retrieved his consistency by explaining that he classed the Secretary of State as a "foreign Minister." The third resolution protested against any interference "of the Imperial Parliament with the internal affairs of Victoria, except at the instance or with the express consent of the people of the colony." The fourth denounced all instructions from the Queen through an English Secretary of State as "derogatory to the independence of the Queen's representative, and a violation both of the principles of the system of responsible government, and of the constitutional rights of the people of this colony." The fifth pledged (not the people nor the Parliament but) the Legislative Assembly to any measures necessary in "putting an early and final stop to the unlawful interference of the Imperial Government in the domestic affairs of (the) colony." The task was easy (he said).

The Chief Secretary ought to "sit down to-morrow morning and write directly to Lord Granville;" to enclose a copy of the resolutions, and say that, "after a day to be named, no official communication" addressed to the Governor "would be entertained by Her Majesty's advisers, would be received by them, would be permitted to have official publication in this country, or would be laid on the table of either House of Parliament. If that were done I think it would settle the question." He had been himself in office, but after the episode of the Darling grant, he "could not consistently with self-respect continue to hold the office of Executive Councillor in the country, and resigned."

Mr. Macpherson, the Chief Secretary, shrank from the task of destroying the Queen's supremacy with his pen. McCulloch, Kerferd, Grant, Wrixon, Francis, Casey, MacMahon, and Stutt supported Higinbotham. There were divisions on some points, but the resolutions were carried (Dec. 1869) a few days before the end of the session. Mr. Macpherson did not obey them. Mr. Berry became his Treasurer after the close of the session, and the Secretary of State was permitted to serve the Queen without notice of

dismissal. The Colonial Society which had evoked Mr. Higinbotham's wrath became in 1870 the Royal Colonial Institute. Ere ten years elapsed more than a thousand members had joined it. In 1891 its numbers were 7362. The Hon. Sec., C. W. Eddy, too soon to be removed by death, was fervid in the cause, and F. P. Labilliere, a native of Victoria, was his coadjutor. Independently of the Colonial Institute, the disintegrating policy imputed to Gladstone and Lowe, and of which it was considered that Earl Granville was convicted, was protested against at meetings known as the Cannon-street meetings. Mr. J. A. Froude wrote that "Lord Granville took pains to exhibit his indifference whether the colonies went or stayed; and it is this indifference, so ostentatiously displayed, which is the active cause of alienation."[8] By denials, faint at first, but strengthening as it became clear that Englishmen in general disagreed with them, the ministry escaped their difficulty; and when Earl Clarendon died, Earl Granville was transferred to the Foreign Office.[9] Earl Kimberley carried to Downing-street better professions, and when Mr. Knatchbull-Hugessen went thither the patriotic were reassured by his assertions. "Once more I tell you (1872) that unless I am utterly and entirely deceived the policy of the government is to cement the union between the colonies and the mother country." Patriotic colonists, believing his words, felt that they could rejoice over the repentance of some of his colleagues.

Although Duffy had not opposed Higinbotham's resolutions, he was not loth, as head of a ministry (in 1871), to endeavour to cause a collision of Imperial with colonial interests. Calling himself a free-trader, he enforced protection. The Constitution of Victoria barred the Legislature from imposing any Customs duty upon goods from

[8] After Froude's death in 1894 a letter of his (written in London, 12th April 1870) was published, in which he said:—"G—— and Co. deliberately intend to shake off the colonies. They are privately using their command of the situation to make the separation inevitable."

[9] Lest it should be thought that only colonial eyes could detect danger in Earl Granville's conduct, let the following paragraph from the philosophical *London Spectator* be read:—"It is with a sigh of relief that we see him quit his department before any colony has declared at once its independence and its undying hostility to Great Britain. It was a very near thing indeed."

any one country which "shall not be equally imposed on the importation of the like article, the produce or manufacture of or exported from all other countries and places whatsoever." Mr. Duffy's ministry hoped that if the colonies could be induced to frame a prohibitory inter-colonial tariff the exclusion of English merchandise would follow. A popular protest against "Imperial interference in fiscal matters" commended itself to Duffy, who warmly abetted the scheme which was to make England, not a favoured, but a foreign nation in relation to Australia. Conferences were held, at which ministers represented various colonies. Whether from intention, or from that unreadiness which compelled him to pen his speeches before uttering them, Duffy at one of those conferences so expressed himself in discussion, that a minister from a different colony ejaculated immediately afterwards to a friend: "That man Duffy is as great a traitor as ever." Earl Kimberley received the results of the conference, and the Imperial Parliament passed an enabling measure, which only local jealousies disabled the colonies from promptly using to the prejudice of the Empire. The spirit of dissidence which spurned any closer connection with England than with Russia, avenged itself upon schemers against the mother country. Local concord could not be attained, and the weapon was not used. Plotters who cursed their mother could not agree to bless their sisters. The energy of South Australia in opening telegraphic communication with the mother country in 1872, touched chords of affection in loyal hearts throughout Australasia. It was celebrated by a banquet at which Lord Kimberley presided in London. Enthusiastic cheering greeted him as he proposed the "Integrity of the British Empire," and at both ends of the world more loyalty was shown than had been expected.

Events had elicited an appeal from the Poet Laureate[10]

[10] ". . . we lately heard
A strain to shame us—'keep you to yourselves;
So loyal is too costly! friends, your love
Is but a burden: loose the bond and go.'
Is this the tone of empire? here the faith
That made us rulers? this indeed her voice
And meaning . . . .

against the base ideas which had been associated with the ministry. Another phase of intercolonial relations should be mentioned. The early attempts of Wentworth to federate the colonies as loyal limbs of the Empire have been mentioned. There were some who sought by federation to detach them. There were many who gave no thought to the matter. The last detachment of Imperial troops was removed from Victoria in 1870. There were regrets in many minds when the symbols of the English army were withdrawn, but there was no resolve in the public mind to arrest McCulloch in his course. The Imperial Government were willing to leave, and the Colonial government expressed a wish to retain, a small military body to assist in fortifying, and to aid in organizing local volunteers. The colony was willing to pay for the cost of the troops, which in time of war were to be under the orders of the chief Imperial officer in the colonies. Under him they could be gathered from the several colonies, and massed for service in any spot. McCulloch insisted that unless a guarantee were given that no removal from Victoria should be permitted, Victoria would not pay for the maintenance of a detachment. Such a guarantee to each colony would have put it out of the power of the commanding officer to combine his forces in case of need. The Imperial Government could not consent to McCulloch's demands. He would not abate them. The troops were removed.[11]

What shock has fooled her since that she should speak
So feebly?—wealthier—wealthier- hour by hour!
The voice of Britain, or a sinking land,
Some third-rate isle half lost among the seas?
The loyal to thy Crown
Are loyal to their own far sons who love
An ocean empire, with her boundless home
For ever broadening England and her throne
In our vast Orient; and one isle, one isle
That knows not her own greatness;—if she knows
And dreads it, we are fallen."

—Tennyson's "Ode to the Queen."

[11] McCulloch complained that the troops were removed because the Home Government would not let them stay. This was true, but not the whole truth. McCulloch would not consent to keep them except on conditions which would have made military control and decision impossible or useless.

These events attracted attention to the defenceless condition of the colonies. In New South Wales a volunteer force had been formed in 1854. Mr. (afterwards Chief Justice Sir) James Martin was notable for the energy and capacity he displayed in Parliament and elsewhere on the subject. In Victoria, troops had been raised, but in South Australia a new corps had to be formed (1877), when Sir W. Jervois visited Australia to advise upon colonial defences. In Tasmania a volunteer force was broken up in 1866, and was not revived until Sir W. Jervois, on behalf of the Imperial Government, appeared as a counsellor.

The undefended state of the colonies, when Imperial troops were withdrawn in 1870, furnished an opportunity to those who looked with disfavour upon wholesome union with the mother country. The method suggested by Mr. C. G. Duffy seemed grotesque to many, but, nevertheless, as it proffered immunity from foreign attack, some persons advocated it. He proposed that the colonies should be neutralized in time of war. That belligerents should consent to spare a wealthy city which they might sack was hardly to be expected, nor was it a comfortable reflection that, under Duffy's proposal, an English man-of-war would be treated as a stranger, and compelled to quit a colonial port as soon as she had received the bounded civilities accorded equally to her and her foes. The motive of such a project was not difficult to divine. After Duffy left office Mr. O'Shanassy, without personal allusion to his former friend, but then bitter foe, moved resolutions[12] condemnatory of the claim set up on behalf of the Australasian colonies to make treaties "with foreign states," and his speech was printed in pamphlet form.

The separation from England, which Dr. Lang in 1856 commended to Duffy as the mark for his aim, and the neutralization of patriotism which the latter evolved subsequently, having vanished into air, he seems to have been moved in his old age by the *laudis titulique cupido* which caused his countryman, Wolfe Tone, to attire himself in French uniform, gaze in solitude at his appearance in a mirror, and sigh for future fame. *Quis virtutem amplectitur ipsam, præmia si tollas?* Negotiations were set on foot, and

[12] 10th Sept. 1872.

Duffy was adorned in the name of the Queen by the Gladstone ministry in 1873, and became a minion of St. Michael and St. George.

Mr. Higinbotham, weary of waiting for the day when the Secretary of State should be silenced and the supremacy of the Assembly confessed, retired from Parliament. He had outlived his popularity in the Brighton constituency. In 1871, puzzled at his vehement support of principles he professed to condemn, the electors, without any unfriendly feeling to the man, rejected his services.[13] He was elected by another constituency, but found no consolation. Some members cared more for their own aggrandizement than for the promotion of his views. When they obstructed the business of the country by an abuse of Parliamentary forms, he, agreeing neither with the policy of the majority, nor with such a manner of resisting it, quitted the political arena in 1876. "I find that it is impossible for me, in the present emergency (he said), to join the ranks of either side."

During Mr. Berry's brief Administration in 1875, and while an Acting-Governor held the reins during the absence on leave of Sir G. Bowen, Mr. Higinbotham had made a last effort to warp the relations between Victoria and the mother country. Lord Carnarvon had written a despatch on the exercise of the Royal prerogative of pardon. Mr. Higinbotham proposed to move in September that the opinion of a Secretary of State had "no legal authority" on such a subject "in a colony possessing responsible government," and that "the expression" of such an opinion conveyed "an insult to the independence of the representative of the Crown, and a menace to the system of self-government established by law." It was "the imperative duty of Her Majesty's ministers for Victoria to take immediate and effectual steps to guard the Queen's representative in this colony from being made the recipient in

[13] He inveighed at a meeting against the treacherous conduct of a majority of the Assembly on certain points. He demanded (as usual) unquestioned supremacy for the Assembly. An elector asked how he could in the same breath demand that supremacy and inform his constituents that the body for which he demanded it was faithless and unworthy to be trusted with power. His circumlocutory reply did not satisfy the common sense of the meeting.

future of illegal official communications from any Imperial servant of Her Majesty." Mr. Langton immediately gave notice that in a colony "possessing responsible government proposals dealing with subjects of such gravity and importance" ought to be submitted to the Legislature by a minister.

The Berry ministry was struggling for ministerial existence, and neither resolution nor amendment employed the Assembly. The ministry was defeated on a financial proposal. McCulloch succeeded in forming a Cabinet. An adjournment for ministerial elections produced no antipathy to the Empire. On a test division, McCulloch sustained his position (20th Jan. 1876), and four days afterwards, disheartened at the lack of sympathy with his projects, and disapproving of those of others, Mr. Higinbotham resigned his seat, and entered the Assembly no more. He retired to the privacy in which he was beloved by all; and only ceased to practise at the Bar when during the administration of Mr. Service in 1880 he was placed on the Bench of the Supreme Court.[14]

[14] Mr. Higinbotham, after he became Chief Justice, retained the opinion embodied in his resolutions of 1869, that "advice, suggestions or instructions by the Secretary of State for the Colonies" to the Governor of Victoria were unlawful, "derogatory" to the Governor, "and a violation both of the principle of responsible government and of the constitutional rights of the people of this colony." As Chief Justice, in 1888, he would, under usual conditions, become administrator in the absence of the Governor Sir Henry (now Lord) Loch; and it was natural that the Secretary of State (Lord Knutsford) should wish to know whether, in case of becoming administrator, Mr. Higinbotham would administer the government in the usual manner. A courteous correspondence was instituted by Sir H. Loch, and Mr. Higinbotham stated that he would be "sorry if the Secretary of State should be allowed to suppose that I would accept the office of Acting Governor and administer it otherwise than in accordance with the public law regulating the status and duties of a Governor in Victoria, which I had recently by request endeavoured to explain to him." Lord Knutsford, having received an opinion from the Crown Law Officers that the system in vogue throughout the Empire was "not inconsistent with the Colonial Constitution Act, or with any principle of law, or with the principle of the colonial constitution, or with the working of the Parliamentary institutions in the colony," asked Sir H. Loch to ascertain whether Mr. Higinbotham, after considering that opinion, still adhered to his former views, with which Lord Knutsford was "unable to concur." Mr. Higinbotham was not so impressed by the opinion of the Law Officers as to waive his own, although *when another* man was Chief Justice, and Mr. Higinbotham was Attorney-General, he had written that the judges were "officers of his department." He wrote strongly upon the

It is necessary to recur to the ministry which Mr. Berry formed, when the Acting-Governor, Sir W. Stawell, sent for him in 1875. The attempt to entrust the guidance of the Assembly to a member whom it had refused to follow entailed the natural consequence. The House rejected his budget. He, like Mr. Kerferd, failed to obtain a dissolution, and McCulloch was sent for. Messrs. Gillies and Kerferd, who had opposed the tacking of bills in 1864-65 in the Assembly, and R. S. Anderson, who had resisted it in the Council, joined McCulloch, and in both Houses the ministry had friends.

Unable to regain office, Berry's followers determined to obstruct business. By adroit selection of speakers against time, and by taking rest in detachments, it is possible so to strain the forms of a deliberative body as to render it useless for deliberation.

The triumph of misrule comforted those who were not called upon to rule. The Government proposed a new Standing Order, compelling the Speaker or Chairman to put a question on demand, under certain contingencies. The Opposition determined to resist it. Word by word amendments were to be moved. Night succeeded day, but no rest was found. The debate, which began on the 8th February, continued without intermission throughout the day and night, through the following day and night, and until late on the 10th. Abuse of the forms of the House was to destroy its officials, if not some of its members. The end could not be looked for in any given week. Abusing the heroic words of Stonewall Jackson, the Opposition applied to themselves the epithet made famous by the gallant Confederate General. They did not perceive that by one form of the House they might themselves be foiled. One of their amendments had been defeated, and a member

"quite unmerited indignity offered to the present holder of the office of Chief Justice of Victoria." He commented also on the "illegal practice" of the Colonial Office and its "sinister and clandestine policy." Lord Knutsford instructed Sir H. Loch by telegram that "in consequence of Chief Justice's inability to accept conditions essential in correspondence with Secy. of State, H.M.'s Government are reluctantly obliged to appoint to administer temporarily (when occasion has arisen) some other person who will be appointed out of the colony." Accordingly Sir W. Robinson became Acting Governor in March 1889.

was rising leisurely to move another, which would have let loose each speaker afresh, when a ministerial supporter,[15] Mr. R. Murray Smith, obtained the Speaker's eye and voice—and moved the "previous question." The Opposition did not comprehend the necessary consequence. Though generally resorted to in order to avoid expression of opinion by the House on a subject which it is thought unwise or inconvenient to decide upon at the time, the effect of the question (as put by the Speaker in those days), "That this question be now put"—was to enable the House promptly to decide, either to shelve the matter, or to pronounce an opinion. If it were decided that the question should be put, it had to be put at once by virtue of the word "now." One debate ended the matter; and thus the closure, or the "iron hand," as McCulloch's resolution was called, was adopted in Victoria for one session. When the position became clear to the misnamed "stonewall brigade" of Victoria, they raved against the "Parliamentary trick" by which they were crumbled. Their liberality arrogated for none but themselves the use of Parliamentary forms. Their violence was ominous of the manner in which they would comport themselves in a struggle which they announced their desire to renew with the Upper House.

The ranks of the Council were recruited in 1876 by the unopposed return of Sir C. (formerly Mr.) Sladen to his old

[15] One who was not a member of either House, and was actuated by mere humanity, suggested the remedy. He had no desire to serve either party. *Tros Tyriusve mihi nullo discrimine agetur.* But the warfare was being waged, like McCulloch's deadlock struggle, unfairly. Passing through the Parliament library he saw an aged official, ghastly and weak. The library was open for members to lounge or to rest in, but the old gentleman had to be awake. With an assistant he had arranged to take watches, by day and night. A few more days would probably have terminated his sufferings. Yet he did not complain. Meekly, but feebly, he accounted for his weakness by telling the facts, and sighing that he was informed the debate would last more than a fortnight. The unmurmuring tale could not but touch any heart. Neither Berry nor McCulloch could claim to prolong debates to the loss of human life, but neither to Berry nor McCulloch could the visitor appeal. He bethought him of Mr. R. Murray Smith as a man open to good sympathies. He asked if he wished to prevent lingering death by terminating the debate, and volunteered to suggest the means if Mr. Smith would use them himself and not make them a ministerial weapon. He stipulated that the remedy should not be made use of as a ministerial one, and that secrecy should be observed, lest by being warned, the protracters of suffering should prevent Mr. Smith from attracting the Speaker's eye.

seat, amidst general congratulations. But other provinces were not so wise as that which elected him. Nevertheless, the patriotism of the members, as a body, was undoubted, and the fact that they were elected gave them influence.

An Electoral Bill, passed in 1876, increased the disproportion between the Houses by raising the number of the Assembly to 86. It failed to restore the provision of the Constitution that no man should vote who could not read and write. It enacted that at a general election all elections for the Assembly should be held on the same day. The Council passed the bill without a division in October. They did not receive similar treatment from the Assembly. A Select Committee, moved for by Sir C. Sladen, recommended an augmentation of the Council from 30 to 42. The necessary bill was passed, and sent to the Assembly (15th Nov.); but though the session lasted until 22nd December the bill was not dealt with. The Governor was made to inanely congratulate both Houses upon the "more equitable adjustment of the representation of the people by removing inequalities;" and in May 1877 the Houses saw the fruit of their labours.

It would be tedious to dwell upon the contentions of 1876 so minutely as was necessary with regard to those with which Lord Canterbury had to deal, but they must be glanced at.

The transfer of men from one standard to another made it difficult for the press to appear consistent. A newspaper aiming at popularity often found itself condemning a man it had formerly extolled, and praising one whom it had formerly censured. McCulloch, O'Shanassy, and Berry,[16]

[16] When Mr. Macpherson made Mr. Berry Treasurer in 1870 the *Age* averred that the appointment was shameful. ". . . We venture a belief, we almost express a hope, that so traitorous, so untrustworthy a politician as Mr. Berry will not be recognized as fit to control three and a-half millions of revenue, the contracting of loans, the regulation of the public account, and to have in his hands the public purse. . . . He has betrayed the politicians who took pity upon him, and rescued him from ruin, but in supporting Mr. Berry they have consented to bribery and corruption in its worst form. . . . We protest against the degradation which the whole colony would undergo by Mr. Berry taking his seat on the Treasury benches as the Finance Minister of Victoria." At a later date, when Duffy terminated his official association with Mr. Berry, the *Age* declared (May 1872) that the latter was "unfit to be an honourable member of the Assembly," and that his "resignation of the

had thus been smitten by alternate praises and censures. The elections of 1877 were in favour of McCulloch's opponents. He hastened to resign; following an abnormal example recently set in England, but reprehensible as tending to oust Parliament of its functions, and to deprive the Crown of authentic materials for judgment in creating a new administration. Sir G. Bowen asked Mr. Berry to form a ministry.

It is not necessary, in dealing with the constitutional disputes between the Houses, to allude to every temporary difference. There would be little use in two Chambers unless there were occasional argument, or even respectful conflict. Mining on private property was one subject of contention. Lord J. Russell's instruction to Sir G. Gipps, that Crown grants should convey everything whatsoever within the soil, had in very few instances been complied with. Grantees did not contemplate the presence of precious metals. The government, under Deas Thomson's guidance, took care not to carry out the letter of their instructions; and on the discovery of gold in 1851 asserted the right of the Crown to gold on private as well as on Crown lands.

The Surveyor-General in Victoria had, maugre repeated warnings, sold so much land reported as auriferous, that those who measured progress by the finding of gold declared that it was necessary for human happiness that gold-seekers should have a right of entry and search on all lands. The Council had asserted that property of one man ought not to be sacrificed on the demand of another; and there were so many freeholders in the vicinity of goldfields that it had been found impossible to stir up general hatred to the Council for maintaining rights which were widely spread.

There were legal disputes as to the ownership of gold on private lands, and they were not decided on the highest authority until 1877. Meanwhile owners of lands made

Treasurership with the approbation of his colleagues is such an indication of self-consciousness of infamy as will render it advisable for him to retire from Parliament altogether for a time at least." Nevertheless at the general election in 1877 there was no more ardent supporter of Mr. Berry than the *Age*.

contracts with enterprising miners. Land alienated by the Crown for a few pounds was resold (on presumption of private property in the gold) for scores of thousands of pounds. A bill to legalize contracts between landowners and miners was brought in by the O'Shanassy government in 1858, but so little importance was ascribed to it that when the Council amended it the Assembly allowed the bill to lapse. In 1872 another bill empowered the government to grant mining leases to enterers on private lands. Petitions against it were poured into the Council. The bill was amended by excision of the powers conferred on the government, and by legalizing private contracts. The Assembly rejected the amendments, affirming that the exaction of money by means of private contracts disregarded the rights of the Crown and the revenue. The Council insisted on its amendments, alleging that it was unreasonable to exact revenue only from gold found on private lands, and that "to confer extraordinary powers upon a political minister over all property in land under colour of extracting gold therefrom" was harassing, and fraught with danger. The Assembly insisted on the original bill without further reasons, and a prorogation left the matter unsettled.

One of the objections to the bill of 1872 was the unlimited power of a minister to make regulations. To remove this obstacle, the Governor's speech in 1873 announced that "the whole of the provisions required to administer the Act (had) been included in the bill" to be submitted. The bill was expedited in the Assembly, and sent to the Council, where, in Committee, it was resolved that the government should not have power to grant leases on "lands alienated before the passing of this Act without the consent in writing of the owner thereof;" though as to all other lands the power was conceded. The amendment, requiring an owner's consent, did not satisfy the desire of those speculators who had fixed greedy eyes upon certain private lands. The Governor was made to say that "the absence of special legislation on the subject caused serious impediments in the way of the settlement of the people," and the members were dismissed to the general election in which Mr. Francis, the hero of protection, and of un-

collected Customs duties, was to goad the electors of one Chamber to ill-will against the members of the other. The failure of his scheme of reform, and his resignation, have been told. His colleagues, who carried on the government, did not send their Mining on Private Property Bill to the Council until December 1874. The Payment of Members Bill, which closely followed it, was more important in the eyes of some members than the Mining Bill.

Two days after renewing the bill for payment of members, the Council, by a majority of one, rejected the Mining Bill (17th Dec.). All were willing to legalize mining on private property with the consent of an owner, but nearly all thought it idle to discuss the subject within a week of the prorogation. Another bill on the subject reached the Council in March 1876. At that time an appeal to the Privy Council was pending on the question of the ownership of gold on private lands.[17] Opponents of the bill, who contended that the gold went with the land, were willing to abandon their opposition if the judgment should be hostile to their views, and the bill was shelved (4th April 1876). The same fate attended a bill in a succeeding session.

Early in 1877 it was known that the Privy Council had decided that the right to gold did not pass with the grant of the containing land. Thereupon a bill, conducted by the Minister of Mines (W. C. Smith) in the Assembly, was sent to the Council in October 1877. It deviated widely from measures with which the Assembly had formerly been content. There sat in the Council a member, Mr. J. A. Wallace, practically acquainted with gold-mining. On his motion, Mr. Smith's bill was referred to a Select Committee (23rd Oct. 1877), was amended, and was returned to the Assembly (6th Dec.). Mr. Wallace provided that the owner of land required for mining should be compensated under the general compensation statute applicable to resumption of lands. He set out the regulations which were (in his measure) to supersede the arbitrary powers aimed at by the Minister of Mines, whose enthusiasm for the bill disappeared as soon as it was remodelled. The Assembly allowed it to drop, and the same fate attended similar bills in 1878 and

[17] Woolley *v.* The Ironstone Hill Company.

1879. Thus it became impossible to complain that mining on private property was obstructed by the Council.

The unreflecting might upbraid the Council when it rejected or altered a measure, but the common sense of the community saw that, unless a second Chamber had discretion to say yes or no to a bill, it was idle to give it power to discuss it. The lovers of change were, however, fully persuaded that unless the Council could be robbed of its discretion, some schemes might fail. They therefore sought for an occasion of quarrel between the Houses, trusting that the majority controlled by Mr. Berry in 1877 would enable him to do what McCulloch and his colleagues had failed to do in 1866.

It was hoped that Sir G. F. Bowen would be found more pliant than his predecessor. It was rumoured the Speaker of the new Assembly, Duffy, was an adviser, in secret, both of the Governor and of the ministry.

It was thought desirable in the first instance to create discord by a special land tax affecting none but those who held large tracts of freehold. To those holders had descended the unpopularity which had been attached (under Earl Grey's Orders in Council) to pastoral tenants of the Crown. Many of those tenants had been transformed into freeholders under Land Acts, one of which Duffy had fathered and extolled. The Act had afforded facilities for acquiring land under false pretences, and plundering the State. There were honourable exceptions. The fraudulent may have been a minority. But some who had no intention to retain land selected it under the vicious principle of free selection embodied in Duffy's Act, and sold it as soon as possible, thus enriching themselves at a loss to the State. Some rich men largely availed themselves of the Act (while Duffy himself administered it), and acquired large properties. By rich and poor, with the aid of the government, the State was defrauded. In the Council the inherent defects of the Act had been pointed out.

The Berry ministry resolved to pass a "progressive land tax," starting at a high point, and rising by leaps and bounds in a manner which would make lucrative tenure of large estates impossible. The adopted phrase was that it was necessary to "burst up the large estates." If the rich

should resist, or if the Council, daily taunted as the representative of property, should demur to an iniquitous impost, popular indignation might be aroused. All holders of more than 640 acres of land were to be deemed owners of a "landed estate," which was to be valued and taxed. Valuers were to classify lands in four classes. Commissioners were to hear appeals against the classifications. The Commissioners were to have power to fine and imprison, and there was to be no appeal from them to any court whatsoever in or out of the colony.

The warrant of commitment "to the nearest or most convenient gaol," required "no order, conviction, or other formality," and was to be a "sufficient warrant" for all gaolers. A fine imposed was to be made known to a "law officer," who was to "cause a final judgment to be signed in the Supreme Court for the amount . . . and costs . . . and no writ of error or appeal shall lie or be had thereupon." It was deemed that the singling out of a small number of persons, the banning of the common law, and other arbitrary features, would provoke the Council to throw out the bill, and thus induce a contest in which the rich might be accused of striving to escape taxation. Those who thought expediency the highest wisdom advised the Council to accept the bill with its hideous clauses, under which a commissioner (there was no stipulation that he should be a lawyer) might send men to gaol without regard for an Englishman's rights.

On the 11th September the Land Tax Bill reached the Council. In October a debate terminated in the rejection, by 16 votes against 11, of a proposal by Sir C. Sladen to lay the bill aside because it created a tribunal with unusual powers, and without the customary safeguards for the liberty of the subject, and because under the Constitution Act it was a bill which the Council could not alter but might reject. Some members deplored the unrighteousness of the bill for which they voted.

While the fate of the Land Tax Bill was in suspense, Sir G. Bowen, who knew that the tact of Sir H. Barkly[18] had averted such a procedure in 1861, consented to do what Sir H. Barkly had declined to do. He agreed to placing a

[18] *Vide supra* pp. 256 *n.* and 264.

sum for payment of members in the Appropriation Bill, and thus coerce the Council to renew the payment in a form which would withdraw the matter from their control, or to reject the Appropriation Bill to which it was tacked.

There was an obstacle. The Duke of Buckingham's despatch[19] (1st Jan. 1868) had declared that the Governor "ought not to be made the instrument of enabling one branch of the Legislature to coerce the other." It was true that without withdrawing his despatch the Duke had subsequently left Governor Manners Sutton to exercise his own discretion in the particular matter of the Darling grant, but the first despatch was of more general and binding nature.

Sir G. Bowen resolved to obtain the authority of the Colonial Office for disregarding the instructions of 1868. A telegram was first resorted to (19th Sept. 1877).

"Payment of members having been twice affirmed by Parliament, by Act, my ministers now propose to place it on the estimates as in New Zealand and Canada.[20] Am I prohibited, as some contend, by the despatch of 1st January 1868 from consenting to this? No Imperial interest is concerned, as was the case in the Darling grant. . . . Another collision with the Imperial Government and the House of Assembly is probably inevitable if I am prohibited . . . from following the advice of my ministers in this matter. Pray send me a reply. The question is urgent."

The Secretary of State could not gather from this missive the fact that payment of members had only been sanctioned as a temporary experiment, and that by all three branches of the Legislature it had been recognized as a subject which could only be dealt with in a separate bill.

The Earl of Carnarvon, without requiring explanation by despatch, replied by telegram that as the responsibility was with the ministers, he saw "no reason" why the Governor "should hesitate to follow their advice." The Governor followed it, and in his despatches assured the Earl that he would with "increasing watchfulness and inflexible resolution" abstain from showing "personal favour to either political party," (although some members of the Council complained that he urged them, in season and out of season,

[19] *Vide supra*, p. 249.

[20] A deputation (April 1878) to Sir M. Hicks-Beach pointed out that this statement was incorrect—payment in Canada being provided for "not by the annual Appropriation Acts," but by special Acts.

to abandon their opposition to payment of members, and enable him to escape in peace). He was but a lodger. Their future was bound up with that of the colony.

The responsible minister in the Council informed that body that it was "highly undesirable that the Legislative Council should interfere, even by a question," on a subject within the function of ministers, "and controlled by the exclusive privileges of the Assembly."

The Council informed the Governor by address (8th Nov.) that they could not accept such a statement; that in 1861 the offensive item was not included in the estimates—that several bills on the subject had been thrown out—that the two which were passed had been "passed on the understanding that they were tentative only, and limited in their duration;" that the question was "still in the region of experimental legislation," and was one of "public policy" demanding treatment in a separate bill; and that to include a sum for payment of members in the annual Appropriation Bill "might make such procedure the instrument of enabling one branch of the legislature to coerce the other." He answered that he had consulted and would again consult his advisers. The ministry sent a separate bill to the Council (6th Dec.), but retained the item for payment of members in the Appropriation Bill.

On the 11th December the Council declined to read the Payment of Members Bill a second time on that day, and on the 13th the Appropriation Bill was sent up, and, without a division, the bill was laid aside because it contained provision for payment of members already rejected in that session, and "because to tack to the annual Appropriation Bill a question of public policy precludes the Legislative Council from giving a free and deliberate vote concerning it, and deprives them therefore of their constitutional right."

Again, the community had the horrors of a "dead-lock" before it. Confidence was arrested, if not destroyed; trade was paralyzed; fear and doubt were among all men. Mr. Berry's demeanour was not calculated to reassure the public. On the day of the rejection of the bill he declared in the Assembly: "We must have the power to coerce. The Council say they will not be coerced, but I say they must be coerced."

The blow which the ministry determined to inflict required the helping hand of the Governor, and he who extolled his own impartiality, and was commended by telegram from Downing Street (9th Feb. 1878) "to maintain constitutional impartiality of action," was involved in more than one personal altercation, which it is needless to expatiate upon, but which caused correspondence which found its way to Downing Street. On the 31st December the ministry presented him a memorandum impugning as "incompatible with the principles of responsible government" the instructions of Mr. Cardwell (to Sir C. Darling), and of Earl Granville (to the Earl of Belmore in Sydney), that the Governor was bound to obey the law. The word "Governor" ought in all cases to mean "Governor-in-Council." Would he obtain from the Colonial Office permission to sign warrants to extract money from the Treasury contrary to law, and in accordance with an irregular practice followed before 1862, by which, on the mere vote of the Assembly, money was paid, until (when the illegality was discovered) the practice was abandoned and constitutional usage was restored.

They did not appeal for advice; but, "to vindicate responsible government and sustain the true dignity of the Crown," it was necessary to "relieve the representative of the Crown of all personal responsibility."

The Governor, seemingly unconscious of the degradation proposed for his office, forwarded the memorandum, and hoped that the decision on the "important and pressing subject" might be received by telegram. But neither he nor his advisers waited for the reply. On the 8th January, while the Legislative Council was sitting, they issued a *Gazette* notice, which was literally a revolution by placard. They had asked Sir G. Bowen to sanction "reductions in the public service with a view to economize the funds." He acquiesced without first ascertaining whether the act required was in conformity with law. One of the ministers had formerly been dismissed from a minor office on the report of a board on which sat Mr. T. Higinbotham, the respected Engineer-in-Chief of the public railways. The dismissed underling of former days had become a minister

in 1877, and was reported as saying in the Assembly, with regard to the 8th January, "I have had my revenge."

The *Gazette* notified the removal of the upright Higinbotham, of many other heads of departments, of all Judges of County Courts and Courts of Mines, all police-magistrates, wardens of goldfields, coroners, and scores of others. Some dismissed functionaries only learned the fact on reaching their offices on the following morning—known afterwards as "Black Wednesday." The Attorney-General, Mr. Trench, issued a notice (9th Jan.) directing the Clerks of Courts to "refrain from issuing any process," or doing anything in regard to County Courts, Courts of Mines, or Insolvency, which might "pertain to the Judge or the holding of a Court."

The Governor, having set his hand to the act demanded of him, boasted on the following day of his impartiality, and jocularly declared that it was not for him to interfere between two Houses unless he could dissolve them both. But newspapers in neighbouring colonies denounced his assertion that he had kept within the domain of the law.[21] The *Ballarat Star* asked (11th Jan.) if the denial of justice was not a violation of law, and if so at what point did the Governor's duty to keep within the law appear clear to him? An address, signed by Dr. Moorhouse, the much-respected Bishop of Melbourne, and by representatives of other religious denominations, without discussing political questions, deprecated the dismissals as "likely to exert an injurious influence on the national character." The protest was sent not to the Governor but to Mr. Berry. The Governor and his advisers had not noticed in the deep

[21] "Sir G. Bowen has had to blow his own trumpet, and boast of impartiality; but unfortunately the very speech in which he made that boast the loudest will remain as a permanent indictment against him. The struggle in Victoria, though partly political, was also largely social, and was avowedly made so by the ministry and its supporters. . . . No Constitution in the world, written or unwritten, can withstand the sort of treatment to which Mr. Berry subjected the Constitution of Victoria. . . . Class was set against class in the most undisguised manner, and to this social strife the Governor lent himself in his speech at Ballarat. . . . The distinct way in which he arrayed himself . . . will prevent any impartial historian from admitting that he comported himself calmly, evenly, and impartially, throughout the strife."—*Sydney Morning Herald.*

foundations of English charters the words which the great English Churchman had engraved there for all time: *Nulli vendemus, nulli negabimus, aut differemus, rectum aut justitiam.*[22] After more than six centuries those words rose to condemn at the antipodes a denial of justice to Englishmen.

The dismissals of the 8th January were to be followed by others, and it was muttered that schemes for invalidating bank notes, issuing government notes without lawful authority, and preventing goods from being landed at the jetty which the Hobson's Bay (private) Railway Company had built and used, would be promulgated. Lalor, the Commissioner of Customs, as if to show that his rebellion in 1854 was due to no hatred of tyranny, declared (18th Jan.) how he would, if the ministry were "provoked," speedily settle the mining on private property question. From owners who had made bargains for royalty on gold extracted from their land he would, "in the exercise of the wisdom of the Crown, take the gold and give it to the man who digs it out. That would be very unpleasant for the owner; but if they are contumacious for long, don't be at all alarmed or surprised if you see a list of that sort as well as the list of dismissed civil servants." The Governor was cheered by a public assemblage when he declared that in what he had done he was supported by an "overwhelming majority of the people of Victoria." He denounced the friends of the Legislative Council as conspiring to destroy him as they had destroyed Sir C. Darling. "Anyhow (he said) I defy them to kill me, either politically or physically." On all occasions he repeated that he would maintain absolute neutrality "with unceasing vigilance, with inflexible resolution, and with strict impartiality." Once he declared that he was "the one public man in the colony who kept his temper unruffled, his head cool, and his hand firm and steady." Such a statement invites an accurate narration of his acts. He did not acquaint the Secretary of State with the abolition of the Courts until 23rd January, when (after the censure which his conduct met throughout

[22] Thus in the Great Charter. The demands of the Barons previously drawn by Langton were as clear as the terms he placed in the Charter. *Ne jus vendatur, vel differatur, vel vetitum sit.*

Australia) he had in part retraced his steps in order to satisfy the Great Charter. Private telegrams were sent to England. The Governor was alarmed. The protest of the Bishop of Melbourne and other ministers commended itself to the public conscience. Sir G. Bowen consulted many persons, and irreticently poured into the ears of each what he had confided to others as secrets.

He had reason to fear that his telegrams and despatches might be deemed deceptive. His insinuation that the Council and not the ministry caused the dispute was at the root of the matter; but there were other misleading statements. He had telegraphed that the reductions on Black Wednesday were "temporary, to economize funds for police, gaols, and protection of life and property." But one of his advisers had boasted that the act was one of revenge, and Mr. Berry declared that gentlemen supposed to be friends of members of the Council were singled out for dismissal that the ministry might return "blow for blow." It transpired that many so-called temporary dismissals would be permanent, and that, in the room of the displaced men, friends of the ministry would be appointed.

Sir G. Bowen could not but reflect that it had been competent for him to stipulate that whatever was necessary by way of economy should be done impartially. If no money were legally available, he could sign no warrants directed to the Treasury. If any were legally available, justice required that it should be distributed fairly, and not partially. There was one thing which, having the downfall of Sir C. Darling in view, the Governor was careful to avoid in his despatches. Though he assailed its members in speech, he told Lord Carnarvon (26th Jan.) that he would continue to treat the Council with the "high consideration due from the representative of the Crown to either House of the Victorian Parliament." In the same despatch, however, he wrote that the Council "virtually" claimed to be "practically supreme."

On the 22nd January he reported that he had verbally attempted to dissuade the ministry from the act of the 8th —that he had grave misgivings about the administration of justice—and wished, at least, that his ministers would

reinstate such judicial officers as might be "willing to dispense with their salaries until the passing of an Appropriation Act." He begged ministers (as he had already recommended Mr. Berry) to take measures for publicly contradicting the rumours that "interference with the currency or banking institutions" was contemplated.[23]

Although the Attorney-General had certified that the strangling of the law was proper, the Governor procured contrary opinions, and was forthwith "assured (by the ministry) that a sufficient number of judicial officers would be retained to keep the machinery of justice . . . at work." The concessions made to him encouraged Sir G. Bowen to ask for more. On the 24th January he "directed the immediate attention of ministers to the question of the legality of some of their recent acts." They had assured him that their dismissal of judges, &c., was "strictly legal." "It has now become clear to his judgment that this is not so. (He requested them) to cancel the notices . . . . respecting judicial officers . . . and every other act or notice whatsoever which has involved or may involve a violation of the law." He quoted despatches from Mr. Cardwell to Sir C. Darling in support of his resolution to govern—"subject always to the paramount authority of the law." On the same day it was announced that he had "directed that the Order-in-Council, removing from office the persons holding the offices of judges of County Courts, Courts of Mines, and of the Court of Insolvency, also Chairman of General Sessions, be cancelled." Separate notices announced the cancelling of the Orders removing all coroners, police magistrates and wardens.

On the 26th Sir G. Bowen reported that, on his representation, the Cabinet "agreed to cancel the acts referred to. I enclose a copy of the *Government Gazette* showing that this has been done. . . . As my ministers consented to retrace their steps in the manner proposed, it was not necessary for me to take any further action at present in this matter." The despatch was laid before the House of Commons in March 1878. One of its enclosures purported to be the

[23] There were rumours that the advertising public were about to withdraw their patronage from the ministerial newspaper, the *Age*, and within forty-eight hours counsels of moderation appeared in its columns.

"Fourth Supplement to the Victoria *Government Gazette* of 18th January," and contained only the three notices of cancellation above cited. An English reader might think the despatch conclusive. Any one who saw the "Fourth Supplement" as published in Victoria judged differently. It contained other notices of the same date (24th) as the cancellations. By them several County Court judges, 32 coroners, 53 police magistrates, and various officers in other departments were again removed or dispensed with; and to the critical it might seem that the despatch was framed with a view to conceal the facts. When the English Blue-Book arrived in the colony the difference between the document sent and the *Gazette* of which it purported to be a copy was manifest. The despatch truly said that the Order of the 8th of January was cancelled in the *Gazette*; but it did not say that the same *Gazette* repeated the dismissals with few exceptions. To guard against the imputation of utter denial of justice a few persons were placed in particular offices, and it was notified (22nd Jan.) that Courts would be held and appeals dealt with "according to law."

The ministerial memorandum (31st Dec.), which proposed to divest the Governor of all responsibility, was received by Lord Carnarvon's successor, Sir Michael Hicks-Beach. But the Earl had been warned of equivocal weapons which the Governor was inclined to use. Sir G. Bowen discovered, among the archives of his office, unpublished confidential despatches from Governor Manners Sutton on the subject of the Darling grant. Passages in them criticized the Legislative Council, and Sir G. Bowen by telegram (31st Jan.) asked for permission to publish them, "or extracts from them." Extracts would have been more advantageous to him than publication in full, for Governor Manners Sutton declared that he had refused, and would refuse, his "assent to any such proposition" as that on the rejection of a money bill by the Council that body should be ignored. But before permission to publish was applied for, the confidential despatches were made known to ministerial supporters. Lord Carnarvon was solicited to telegraph his answer. Meanwhile the Council (22nd Jan.) asked for a copy of the ministerial memorandum (31st

Dec.) to which the Governor expected a telegraphic reply. He declined to furnish it, and implored the Secretary of State, by telegram, "for a speedy decision by telegraph on the memorandum, "so as to arrest public danger and suffering here arising from stoppage of supplies by Legislative Council." On the 5th February the Council adopted an address requesting him to forward to the Secretary of State a telegram—praying that nothing might be done with regard to the withheld memorandum until opportunity for comment might be afforded them; stating that the Governor had refused to furnish a copy; and adding that the President of the Council would send direct to England a copy of the telegram from the Council. The Governor replied that, as the President was sending the telegram his responsible ministers advised that it was "unnecessary to repeat it." On the 9th February the Secretary of State postponed his decision as to the production of the Darling grant confidential correspondence, and relied on Sir G. Bowen to "maintain constitutional impartiality of action." Meanwhile violent words were used with regard to the lost Appropriation Bill. By 52 votes against 23 the Assembly resolved (6th Feb.) to revert to the practice which had prevailed in the colony before adoption of the constitutional method of obtaining money from the Treasury. On the 13th they adopted an address declaring that Sir G. Bowen had been strictly impartial, and that if any representative of the Crown should be so "unwise as to employ the influence and authority of the Crown to help a minority in impeding the wishes of the great body of the people, the certain result would be to diminish the just authority of his office and the legitimate influence of the Crown." In the debate Mr. Berry was applauded for declaring it just as likely that the sun would go back in the heavens "as that that £18,000 (payment of members for six months) will be taken out of the Appropriation Bill."[24] Sir G. Bowen specially called attention to a compliment paid to himself by the Assembly. On the 22nd February a telegram from Sir M. Hicks-Beach startled Sir G. Bowen and his

[24] The prediction was marred by the fact that after a few weeks the sum was taken out of the bill.

advisers. The memorandum of 31st December had been received, and the

"telegram from the President of the Council. Communicate memorandum to Council that their observations on it may be placed before you. I do not feel justified in volunteering any opinion on the memorandum, which, I observe, does not invite my intervention. Your duty in this question is clear, namely, to act in accordance with advice of ministers, provided you are satisfied that the action advised is lawful. If not so satisfied, take your stand on the law. If doubtful as to the law, have recourse to the legal advice at your command. I shall present the memorandum and other correspondence to Parliament shortly, and think they should be published in Victoria also. Telegraph your reasons for desiring to publish further correspondence in Darling case, more especially despatches which, being confidential, I am disposed to think had better be withheld."

The responsibility which Sir G. Bowen had endeavoured to evade was thus left with him. A despatch in due time amplified, but did not qualify the telegram. Sir M. Hicks-Beach thought it very "important that unless the controversy should unhappily prove otherwise incapable of settlement, both Her Majesty's Government and the Queen's representative in the colony should be kept free from any share in it." On the 5th July Sir M. Hicks-Beach defined the duty of a Governor in accepting responsible advice, and at the same time avoiding infractions of law for which he might be responsible himself. By the Constitution Act there were certain duties imposed on the Governor, and his responsibility with regard to them could "not entirely be borne by the ministers nor by the local Parliament."

It was deemed advisable to conceal as long as possible the manner in which the occurrences of Black Wednesday and other matters had been reported to the Secretary of State. The despatches were not produced in the colony until copies of them as presented to the House of Commons had been sent to Victoria. By that time public attention was so much engrossed by other matters that many characteristics escaped observation. When the previously withheld memorandum was laid before the Council, it was referred, on the motion of Sir C. Sladen, to a Committee; and on the 2nd April an address to the Governor was adopted, after a new Appropriation Bill, divested of the item for payment of members, had been received from the

Assembly. Having failed to establish the legal sufficiency of the vote of the Assembly to empty the Treasury, Mr. Berry (7th March) carried a new proposition—that under the 45th section of the Constitution Act the costs incident to the management of the revenue and expenditure were specially appropriated, and should, "during the present financial year, and no longer, be treated as a special appropriation;" and that the Treasurer should ascertain the amount of the said costs . . . from 1st July 1877 to 28th February 1878, "and transfer the same in aid of the Ways and Means Acts 1877-8." Law officers certified (11th March) to the legality of the procedure. The ministry advised the Governor to sign a warrant for £350,000. He signed it and informed the Secretary of State that a refusal would "simply have brought the representative of the Crown into hopeless collision with the representatives of the people in Victoria."

Meanwhile he again pressed for permission to publish Governor Manners Sutton's confidential despatches; the Assembly had carried a resolution praying him to do so, and Sir M. Hicks-Beach telegraphed (6th March) that he would not refuse his consent to the promulgation of any public despatches on the Darling case, and of certain confidential despatches mentioned by Sir G. Bowen, with the exception of one despatch and a portion of another, which would be "better withheld. But ministers must be responsible if any matter so published gives offence or causes difficulties."[25]

On the 19th March the despatches, already shown to members and to writers for the press, were sent to the Assembly. Mr. Berry carried his proposition to authorize the Governor by the vote of the Assembly to use the 45th section of the Constitution Act to extort money from the Treasury; in spite of a warning from Mr. R. Murray Smith that, as the ministry had not acted on the former

[25] A married daughter of Lord Canterbury was in the colony at the time. She was noted as forward in good and charitable works. (After alluding to her father's successful labours to allay political troubles) she wrote to the *Argus* (21st March): "I confidently affirm that had my father been alive these despatches would not have been published. I also do not hesitate to say that I consider their production at this time to be an act which he would earnestly and heartily have deprecated."

resolution to pay money on the mere vote of the Assembly, so they would be wise to abandon their new idea, and to act constitutionally by sending a normal Appropriation Bill to the Council. The Governor signed the warrants (11th March), and produced (19th March) Lord Canterbury's despatches of 1867. Sir C. Sladen brought up (20th March) an address commenting on the ministerial memorandum; upon the Governor's withholding of that document from the Council; upon the contradiction by that memorandum of a recorded decision of the Supreme Court; upon the relations between the Audit Act and the Constitution Act, which forbade the adoption of the 45th section of the latter as a complete Appropriation Act, without the ancillary provisions contemplated and authorized by the Constitution Act, and formally provided in the Audit Act; and repeating the readiness of the Council to pass at once an Appropriation Bill divested of a tack.

On the 21st March, Mr. Cuthbert moved the second reading of the Payment of Members Bill; and, contrary to his custom, indulged in provocative remarks which aroused Sir C. Sladen to unusual vehemence. How can the Postmaster-General tell us "what he thinks we ought to do when he is in concert with others to destroy the independence and dignity of this Chamber; when he is conspiring against us?"

On the 27th March, Mr. Cuthbert assured the Council that in the new Appropriation Bill the "item to which so much objection has been raised would be excised." The Payment of Members Bill was read a second time on the 27th. On the 28th it passed through committee, and Sir C. Sladen vainly endeavoured to procure the assent of the Council to a conference, with the object of limiting the operation of the bill to members of the Assembly.

A new Appropriation Bill was brought in, on Mr. Berry's motion, shorn of the item for paying members. One ministerial supporter denounced the compromise as the "blackest piece of political treachery ever enacted within the walls of this Chamber." Mr. Berry deplored his follower's petulance, but was "at a loss to understand how this Chamber could have won a greater or more complete victory." He had asserted that payment of members

"should not cease for one single day. It never has ceased; . . . we have won a victory . . . notwithstanding that there is a power 16,000 miles away everlastingly disturbing the machinery of this country."

On the 2nd April the Council adopted the address commenting on the ministerial memorandum (31st Dec.), so tardily procured; on the 3rd they passed the Appropiation Bill. On the 4th the Governor told them that he saw in their address, "a personal and gratuitous attack on the representative of the Queen," and an effort to load him with responsibility for acts done under "advice of his constitutional ministers." On the 9th April the Assembly complimented the Governor as "a model for constitutional Governors."

On the 9th April he prorogued the Parliament, announcing that, to prevent recurrence of evils, his advisers would "with all possible despatch prepare a measure to alter" the Constitution. The distant power "everlastingly disturbing the machinery of this country" was to be dealt with. A warning to a Governor to "stand upon the law" was highly offensive to those who desired to break it; and a plot had already found shape in the brain of one of those whom Sir G. Bowen consulted. Long before the proposal to send an embassy to England was publicly hinted at, one who well knew the Speaker, Duffy, remarked that Duffy was contriving a quarrel which should result in a mission to England of which he was to be a member.

The reasons which Duffy was said to have drawn up, and which the Council shattered (Nov. 1877), did not lead to the desired catastrophe.

Sir G. Bowen descanted in a despatch (11th April) on the crisis he had escaped by refusing "to be cajoled or threatened into the adoption" of a course which would have made him break with his ministers, "and with the overwhelming majority in the colonial House of Commons, and also with the country at large." He animadverted upon the "attempted dictation of a section of" the Council, and of an "active clique out of doors," which had pursued him with "persistent and malignant attacks," such as had persecuted all his predecessors whenever in "maintenánce of their constitutional neutrality they failed to obey im-

plicitly the behests of that faction." He contended that if he had dismissed his ministers to please a beaten minority he would have been infatuated. He did not appear to perceive that to refuse to do an undutiful act was not a dismissal of ministers, and that a Governor whose ministers resign because he refuses to break the law is in a widely different position from that of one who dismisses them. He looked for approval of his "impartial attitude." His despatch enclosed the address from the Council exposing the deception practised in sending to England as the opinion of one of the Judges (Mr. Fellows) that which was contrary to his known opinion, but the Governor expressed no regret for his share in the transaction.[26]

On the 15th County Court Judges, Crown Prosecutors, and a few police-magistrates were reinstated. On the 24th the Governor asked for a "general reinstatement, at least until the end of the financial year (30th June), seeing that the salaries have all been voted and included in the Appropriation Bill up to that date." The ministry declined to gratify him, alleging that they were moved by the "imperious necessity which exists for maintaining, in their integrity, the principles which underlie self-government," and that they "respectfully" insisted that the matter was one which they had the "exclusive right of dealing with." Sir G. Bowen, in a wordy despatch (8th May), argued that there was "ample authority for the assertion of ministerial privileges and responsibility."

In the recess one or two Parliamentary changes were made. Mr. McCulloch resigned his seat for Warrnambool, and Mr. Francis was elected in spite of ministerial opposition. But the ministry strengthened the learning amongst their supporters by promising a lucrative appointment to one of their dependents, who sat for Castlemaine, and in whose room Mr. C. H. Pearson was elected in June 1878. Little was known of the new member except that he was an Oxford graduate, who had written about mediæval times, and who had declared in the colony that he was as cogently

[26] The Council (2nd April) pointed out that Mr. Fellows had in 1865 publicly explained how and why his hasty opinion in 1858 was erroneous with regard to the manner in which funds became "legally available" in England.

bound to support free-trade as to believe the facts of the multiplication-table, and that he had afterwards openly allied himself with the opponents of free-trade.

In June the ministry prepared a memorandum for transmission to Sir M. Hicks-Beach, who had received in London a deputation which deprecated the course pursued by Sir G. Bowen, and pointed out the deceptive nature of his communications. Mr. Berry denounced the deputation. Their interference had "excited general indignation," and any such statements as they made ought, "in the spirit of the Colonial Regulations," to be referred to the colony for verification.

Sir M. Hicks-Beach, in replying, did not suppose that it was the intention of Sir G. Bowen's ministers to suggest any limitation of exercise of discretion by a Secretary of State in receiving persons who wished to wait upon him in connection with public affairs. The desire that communications made in England should in all cases be referred to the colony was one which he preferred "to regard as having been made under misapprehension. It would have been well if you had explained to your ministers that (the Colonial Regulations) refer expressly to documents coming from a colony, and can have no bearing upon verbal or written representations addressed to Her Majesty's Government by persons in this country."

As to obtaining money from the Consolidated Fund, Sir M. Hicks-Beach wrote that the law officers in England agreed that under sec. 45 of the Constitution Act money was specifically appropriated for certain charges, but with respect to the "question whether, when the Committee of Supply has voted money for other purposes . . . and such vote has been duly reported to the Legislative Assembly, the amount voted becomes thereupon legally available, &c., the law officers are of opinion that it does not, and that it is not available until it has been appropriated by an Act of the Victorian Legislature." As the ministerial memorandum seemed to "proceed upon a misapprehension of the procedure of the House of Commons in England with respect to taxation and appropriation," the despatch[27] explained that procedure for the information of

[27] 17th August 1878. A valuable State paper.

the Governor, the writer being confident that it was the "desire of all parties in the Victorian Parliament that a sound and regular procedure should be followed in respect of the expenditure of public money," and trusting that the information given would be "of service."

Another despatch referred (25th Aug.) to the dismissals on the 8th January. Avoiding expressions of opinion on the policy of Sir G. Bowen's advisers, Sir M. Hicks-Beach dealt "solely with the personal duties of the Governor." Gravely referring to the violence of the 8th January, he thought that the action proposed cast upon the Governor a duty to satisfy himself that it was justified, and in the particular case it did not appear to Sir M. Hicks-Beach that "any such exclusive right or responsibility was vested in ministers as could relieve (the Governor) of this duty." He desired to make every allowance for the difficulties of Sir G. Bowen's position; but the latter would "have done better in the interests of the colony, and in the maintenance of the principles of Parliamentary or responsible government, if (he) had informed (his) advisers that he felt unable to put his name to the documents directing the removal of those officers."

There was lengthy correspondence on other details, but Sir M. Hicks-Beach could not yield to Sir G. Bowen's importunate appeal for commendation of his act in sweeping away all County Court Judges and stipendiary magistrates by a permanent order in dealing with what was represented to him by his ministry as a temporary emergency. He regretted that he was unable to change the opinion already conveyed to the colony in disapproval of the Governor's complicity.[28] Before Sir G. Bowen left the colony he transmitted (Nov. 1878) an "official memorandum," signed by a minister "for the Chief Secretary" which certified that "only sixty" members of the Civil Service had been then dismissed. It was never known on what ground the memorandum would have been justified, if controverted.

[28] After retiring from the Public Service Sir G. Bowen assisted in publishing a book upon his career as Governor. One critic called it "a book of self-praise." By suppression of the rebukes which he received, and by reiteration of his condemned excuses, he kept out of sight the elements on which a correct judgment might be formed.

It was so wide of the truth that it puzzled the Canadian historian Todd, who, while quoting it, added that "later returns gave a much larger number of removals." If a sense of shame induced an effort to conceal the truth, it would seem that if public opinion had not converted the Governor's prompters from all vices it had made them ashamed of one.

When the session of 1878 was opened, the Governor announced that a Reform Bill would be placed before Parliament, and that its acceptance would "put an end for all time" to the "periodical deadlocks which (were) a standing disgrace to the constitutional institutions of Victoria." Yet he might have seen that it was not the Constitution, but its abusers, who were disgraced when, on failure to carry a measure constitutionally, they resorted to unconstitutional violence. The *dramatis personæ* in the new scene which Victoria was about to present are now known to the reader, and it will be unnecessary to follow in detail all their proceedings or their pleas.

A provision in the Constitution Act forbade the presentation for the Royal Assent of certain bills altering the Constitution unless such bills had, on the second and third readings, been passed by absolute majorities in both Houses; and the Governor was bound by the Constitution Act to reserve such bills for Her Majesty's pleasure. Standing Orders in each House, ancillary to this provision, were in force.

The measure introduced to remove "the standing disgrace to the constitutional institutions of Victoria," proposed that

"any bill (of the kind alluded to) . . . passed by the Legislative Assembly, and ordered to be carried to the . . . Council . . . if not formally passed by the Council within one month . . . shall (excepting in cases of dissolution or prorogation) . . . be then deemed to be a bill which has been properly passed by the Legislative Council, within the meaning of and in pursuance of the provisions of the Constitution Act, and one also which it shall be lawful to present to the Governor for Her Majesty's assent to be given to the same by and *with the advice and consent* of the Council . . . and Assembly, and every such bill shall as soon as the month herein mentioned shall have elapsed, be certified to by the Clerk of the *Executive Council* as *having been passed by the Legislative Council*, any Act of Parliament, or Standing Order, or joint Standing Order, to the contrary notwithstanding.

In case of dispute between the Houses—on certain bills—if such bills should, in two consecutive sessions, fail to pass the Council—there was to be a *plebiscitum*, in which the voters for the Assembly were to supersede the Constitution. If those voters should not disapprove of a bill thus subjected to them, the Clerk of the Executive Council was to certify that the bill had "passed the Legislative Council," notwithstanding any provision in the Constitution Act or "any Act."

Observers from a distance might have deemed it impossible that such proposals could be seriously discussed in a community of British origin. But previous events had prepared the way for the advocacy of such a bill by the ministry[29] in Victoria. Before it was sent to the Council that body had sent two bills to the Assembly. Sir C. Sladen wisely deemed that in order to serve, perhaps to save, the country, the stakes of the Council must be strengthened throughout the community. He obtained a select committee, on the report of which the Council passed a bill lowering the qualification of voters for the Council from £50 to £25, increasing the number of members of the Council from thirty to forty-two, and making other cognate changes.

Another bill proposed to remove difficulties about money bills by enabling the Council to procure the excision of objectionable items in, and thus secure the passing of, an Appropriation Bill. The government prevented the bills from proceeding in the Assembly. Their own bill fared no better in the Council.

Public opinion in the constituencies of the Council was tested in August and September by six periodic elections. A ministerial candidate in the central or metropolitan province was defeated (27th Aug.) by 3854 votes against 1659, by Dr. Hearn. An analysis of the voters showed

[29] One of them, long before the Assembly was asked to read the bill a second time, thus denounced opposition to the government and expounded Home Rule:—"If this government were determined to take steps to carry out the will of the people, had honourable members realized what those steps would be? Perhaps the deportation of the members of Council over the Murray, or it might be to invite the Governor to go on board a steamer in the bay?"

that 681 were bakers, butchers, drapers, and retail storekeepers; 527 were merchants and importers; 515 were described as gentlemen; 487 were licensed victuallers; 200 were builders and contractors; and every trade or occupation had its representatives amongst the smaller numbers in the scale, which concluded with a list of 28 persons, of different callings, amongst whom was a porter. The Council, nevertheless, was still denounced as "isolated from public sympathy," and revolutionary.

The plot to send Duffy to England as an ambassador was so premeditated that long before Mr. Berry's Reform Bill was read a second time in the Assembly the ministry addressed the Governor on the subject. If their local efforts should fail, they would "most reluctantly be compelled to despatch to England Commissioners chosen from (the Assembly) to lay before the Imperial Government the matured result of its deliberation, with a view to get that result embodied in an Act of the Imperial Legislature, and with a full confidence that it will be so embodied at the earliest possible moment." Sir G. Bowen was gracious to Duffy, and the plot bid fair to waft that intriguer to Europe as an envoy.

The Secretary of State, however, intimated so plainly that any Embassy on the subject ought to comprise "gentlemen representing the Council and the Assembly" that the Governor and the ministry prorogued Parliament without acquainting either House officially with the unwelcome news, and laboured to convince the Secretary of State that his despatch did not arrive until the prorogation had taken place.

It is recorded in the Victorian Year-book (the compiler of which was taken to England as Secretary to the Embassy) that (4th Nov.) the Cabinet decided that Messrs. Berry, Pearson, and Sir C. G. Duffy should be the ambassadors, and that Sir B. O'Loghlen should wear Mr. Berry's mantle in the colony. Mr. Berry arranged the matter with Duffy before the commencement of the session, subject to approval of the Assembly. The scheme was submitted to a party meeting at which the delegation of Duffy was warmly denounced. Though no reporters were present, it was announced that in addition to giving

inestimable advice to the ministry, Duffy had, in Mr. Berry's opinion, "materially assisted in keeping the Governor straight," and in corresponding with "leading public men in England."[29]

The way seemed clear for the ambassadors. Mr. Berry (7th Nov.) advocated a grant of £5000 for the "expenses of three Commissioners to England." He declared that unless the Assembly had been "extremely moderate in its pretensions" there would have been "a deadlock in nearly every year of our existence." All he wanted was that the Secretary of State should "do something by means of which the Imperial Legislature will provide that within some definite period the will of this country shall become the law of the land. . . . I don't think there is the least probability of our request being refused." He did not name his Commissioners. Mr. Service, the leader of the Opposition, wanted to know their names, and looked upon it as "an affront to the people of the colony that an Embassy should be sent home to make proposals of so vague and general a kind." Mr. Berry had once objected to referring money bills to a *plebiscitum*, and had asked what a man following the plough could know "concerning the question of the imposition of a tax." Mr. Service asked what the Secretary of State could think of the ambassador who spoke thus, and nevertheless demanded Imperial aid in enacting a law for finality in legislation by means of a *plebiscitum*.

Mr. Pearson, an ambassador *in posse*, defended the Embassy, but did not care in what manner the Assembly might obtain the power demanded. So long as anything required by the Assembly could be obtained[30]—the Bill of 1878 might be left behind, and the Imperial Government might clothe with authority a bill twice passed by the Assembly; or might "abolish the Council altogether;" or might amalgamate the two Houses "in some form that may make it certain that the Assembly shall not be swamped;" or adopt any other method. Otherwise, in place of reform,

[29] *Victorian Hansard*, p. 1744. 1878.

[30] One of the ministry thus summed up the case. "The intention of the government measure is to enable the Assembly to put their hands into the public purse in an easy, accessible, peaceful manner."

the government might resort "to a revolution which might shake the very foundations of society. . . . Does any honourable member mean to say that if the question of our national existence was at stake we could not resort to desperate expedients?"

A member pointed out that Duffy, in 1869, had declared that he had "invariably insisted that no body of men, except the Queen and Parliament of Victoria, had any power to make laws binding upon this country," and that "any claim of the Imperial Parliament to modify our Constitution once granted, or to interpose at all by legislation in our domestic affairs, he held to be a plain usurpation!" The Assembly adjourned until the 12th November. The Speaker's anomalous position as a Cabinet and Crown adviser, and a petitioner for that which he had formerly condemned, became the talk of the town. Differences in the ministerial ranks, and exposures in public, snatched from Duffy the coveted honour. The clay moulded so carefully and so long, cracked in the furnace of public opinion.[31]

When the Assembly met (12th Nov.) the Speaker's heart had failed him, as on some former occasions. Resolved (he said) that the office of Speaker should not in his hands "be liable to any impeachment by just or even captious objectors," he had, on the 11th, "intimated (his) determination not to be made a member of the Commission."

A ministerial supporter, who had at the "caucus" opposed the appointment of Duffy, declared that after hearing the speeches of the Speaker and Mr. Berry, the House must "almost lose all faith in our public men." The Governor informed the Secretary of State that Sir C. G. Duffy "was invited, but declined to form part of the delegation." The

[31] Amongst the most powerful agents which scorched the ministry was the Melbourne *Punch*, whose artist, Mr. Carrington, threw genius into its illustrations. On this occasion a cartoon entitled "The Two Rebels," depicted the devil on bended knees paying tribute to a wigged and gowned figure in whose triumphant face the sly sedition which characterized it was still regnant. "The D——: Take them, dear Duffy—hoofs, horns, tail, and all—and give me your wig and gown. I thought I knew a thing or two, but I am innocence itself compared to you. I give you best—bless you."

result was that, after adjourned debates, a vote including the disputed item was carried.

It was recognized that the Embassy would be sent to England, but the near approach of Sir M. Hicks-Beach's despatch intimating that any delegation should spring from both Houses was unknown. A remission of Customs duties paid in January 1877 was approved by the Assembly on the 19th November 1878. On the same day Sir C. Sladen induced the Council to appoint a Committee to prepare a statement for transmission to England concerning the differences which had arisen between the two Houses. On the 21st a comprehensive statement drawn up by Dr. Hearn,[32] a member of the Committee, was adopted by the Council. Mr. Cuthbert strove to modify a passage which referred to the Governor's complicity in the suspension of a number of laws by dismissals of Judges and Magistrates on Black Wednesday, but was defeated. Mr. Berry carried a resolution in the Assembly, declaring that the resolutions transmitted from the Council "involved an infraction of the rights and privileges of the Assembly," and ought not to be entertained. He declined to proceed with the two Reform Bills (passed by the Council) which had been before the Assembly for more than two months. To lower the franchise for the Council would by "popularizing" it give it a "far better vantage ground" than it possessed already. He was aided by the Speaker, whom a member asked (28th Nov.) whether the Commissioners could represent Parliament in England without authority from Parliament. "This House" (replied Duffy) "is Parliament for all political purposes." Sir J. O'Shanassy cited in reply the words of the Constitution Act. "The Legislature of Victoria shall be and is hereby designated the Parliament of Victoria," but the ministerial phalanx was proof against argument and law.

On the 6th December Parliament was to be prorogued. On the 4th the mail steamer was at Port Phillip. On the 5th Sir G. Bowen received Sir M. Hicks-Beach's despatch (of 1st Oct.), conveying his opinion that "no sufficient cause has yet been shown for the intervention of the

[32] The fact was mentioned by Sir C. Sladen in the Council.

Imperial Parliament" at the request of Commissioners from the Assembly. The Bills of 1878, transmitted by Sir G. Bowen, differed from all former plans, and the proposed *plebiscitum* involved change of a "graver character than any hitherto suggested." He could not think that the rejection of such a scheme by the Council would justify so "exceptional a proceeding," as Sir G. Bowen's advisers rightly termed it, as an "application to the Imperial Parliament to alter, without the consent of the Victorian Legislature, that Constitution Act which was originally framed in the colony, and merely confirmed and made operative by an Imperial Statute." Feeling that the question was "by no means ripe for legislation" in England, he was anxious to render any service in his power, and if after the close of the colonial session it should be "thought that gentlemen representing the Council and the Assembly respectively could with advantage lay their views before" him, he would be ready to hear and advise with them in the hope that they "might agree upon certain principles" by which, "through the exercise of mutual forbearance and concession," legislation consistent with constitutional precedents might be brought about.

Blank were the faces which looked upon the despatch. It was resolved to conceal it from the Parliament, which was prorogued on the following day with a speech intimating that all other questions would be subordinated to what Sir G. Bowen's advisers felt to be the "dominant and overwhelming political necessity of the day." A communication to the Secretary of State led him to believe, though it did not state, that the despatch did not arrive until Parliament had been prorogued. The Secretary of State, perhaps unsuspicious of the fact that only the formal handing of the despatch had been delayed, acknowledged Sir G. Bowen's despatch as one which notified "that he had received my despatch of 1st October . . . respecting (the) mission too late to present it to the Parliament of Victoria before the close of the session."[33]

[33] These details are somewhat nauseous, but the character of the times can hardly be understood without a knowledge of them. The eminent writer, Mr. Todd, was misled in this matter. He says the despatch did not arrive until the question had been disposed of, but that "it was at

Something had to be done with the despatch. Sir G. Bowen had been relieved, and was to proceed to the Mauritius as Governor. The despatch was published in the *Gazette* on the 18th December. Something was done also with regard to the statement adopted by the Council (21st Nov.) with which the ministry had not dealt during the session. On the 26th December Sir G. Bowen transmitted a ministerial memorandum. He was "informed that there was no time (between 21st Nov. and 6th Dec.) for a statement in reply to be prepared on behalf of the Assembly." When prepared, it misrepresented the Constitution. It arrayed the instances in which the Council had exercised the functions conferred upon it by law as proofs that it had resisted the law, and had "steadily endeavoured to usurp the power of amending Appropriation Bills." It averred that the right to reject bills was "merely technical," although expressly enacted in the Constitution, and was "a revolutionary weapon." Though the two Houses were elected, the memorandum spoke of "the country" as constitutionally meaning only the electorates for the Assembly. It called the Council "non-representative" and irresponsible, and designated its powers as "so vast as to have no parallel in past or present history." It declared that the Assembly had "only resorted to tacks" from necessity. Asserting in one breath that the Council was non-representative, and therefore bad, it said in another that to extend the franchise for it might make "deadlocks more frequent, more protracted, and more bitter, since the Council would then be more widely representative than it can at present claim to be." It alleged that the government had "no wish to reduce the second House to a sham;" had "not provoked contest" with the Council; had "caught at every overture of conciliation," and made "every effort at compromise that was compatible with legislative finality." The reader has seen that "legislative finality," as

once published, however, in the official *Gazette*." It may be presumed that some informant prompted him incorrectly. ("Parliamentary Government in the Colonies," p. 515.) He adds (p. 516) that the "despatch did not reach Victoria until *after the prorogation* of Parliament, otherwise it would have received consideration in Parliament."

proposed in the government Reform Bill, was to be obtained by making the Clerk of the Executive Council attest that a bill rejected by the Legislative Council had been passed by that body, and was capable of receiving the Royal Assent as a measure agreed to by both Houses. Sir G. Bowen, in transmitting the memorandum, reminded the Secretary of State that he had originally asked whether he should "pursue the course which the Council attempted to dictate," or "follow the advice of the responsible ministers." It was natural that its authors should endeavour to conceal their memorandum, but the concealment was not of long duration. The papers were laid before the Imperial Parliament, together with a despatch from Sir G. Bowen (27th Dec.) containing the bold statement that the Council had "declined to appoint any delegates to represent that House." Whether it would have declined if asked to do so is unknown. But it was never asked. In fact it remonstrated with the Governor in a special address (4th Dec.) against the despatch of Commissioners without "authority of an Act of Parliament."

It was once a part of the "Loyal Liberal" policy to prevent an Opposition member from being heard. It was significant of some change when, towards the close of 1878, there seemed a disposition to accord a public hearing to opponents of the ministry.

The labours of Mr. Berry in England need not be described. In the London *Examiner* he was spoken of as "an extraordinary compound of a mountebank and a communist;" and perhaps it was on such grounds that Sir C. Dilke associated himself with Mr. Berry at Chelsea, where the latter, *suo more*, boasted of the Liberal triumph in the enactment of the education law in Victoria, although, as a matter of fact, he had voted against it. The result of the Embassy may be learned from the despatch which Sir M. Hicks-Beach addressed to the Marquis of Normanby in May 1879.[31] It may be doubted whether the well-weighed terms of that document were fully appreciated by the ambassadors in England, or by the friends of order when it reached the colony. The demeanour of Sir M. Hicks-Beach

[31] The new Governor had arrived in February 1879.

was as effective as his pen. Mr. Berry, at Chelsea, stated to a meeting of his admirers over whom Sir C. Dilke presided (30th April 1879): "I am perfectly satisfied with the result of my visit in the interviews I have had with public men. I have been most successful with public men on both sides."[35] Finding his Chelsea friends applausive, he boasted of his performance on Black Wednesday.

"The government removed from office all the permanent heads of the public departments. As a matter of fact, this was the very hotbed of support which the Council received[36] . . . at all events, they were removed from office and never reappeared. . . . We proved, in the face of the whole of the so-called society in the colony . . . that we should not temporize or in any way yield to them—that, in short, we were able to deal blow for blow."

While Mr. Berry spoke thus he was in expectation of a formal answer from Sir M. Hicks-Beach. "Three lines of a bill would effect all we require"—was Mr. Berry's plea to Sir C. Dilke and his friends. On the 3rd May, Sir M. Hicks-Beach announced the opinions of the government in a despatch which he sent to the colony, and of which he informed Mr. Berry. As in 1878, so in 1879, he thought "no sufficient cause had been shown for the intervention of Parliament in the manner suggested." Mr. Berry's new proposal, made in London, that Parliament should "enable the Legislative Assembly to enact in two distinct annual sessions with a general election intervening any measure for the reform of the Constitution," seemed "even more open to objection" than suggestions previously made, but it was unnecessary to discuss it, for (Sir M. Hicks-Beach wrote):

"though fully recognizing the confidence in the mother-country evinced by the reference of so important a question for the counsel and aid of the Imperial Government, I still feel that the circumstances do not yet justify any Imperial legislation for the amendment of that Constitution Act by which self-government, in the form which Victoria desired, was conceded to her, and by which the power of amending the Constitution was

[35] Report (*Argus*, 14th June 1879).

[36] In the same month, Mr. Pearson, in a letter to the *Times*, asserted that the Legislative Council in Victoria, after "seeming to assent" to a proposition to be guided by English precedent, "deliberately rejected it." The failure of the Assembly to perform its part in framing the proposed Standing Order in 1867, and its repudiation of a distinct arrangement adopted by both Houses in 1866 as to preambles, prove the value of Mr. Pearson's arguments.

expressly, and as an essential incident of self-government, vested in the Colonial Legislature with the consent of the Crown. The intervention of the Imperial Parliament would not, in my opinion, be justifiable, except in an extreme emergency, and in compliance with the urgent desire of the people of the colony, when all available efforts on their part had been exhausted. But it would, even if thus justified, be attended with much difficulty and risk, and be in itself a matter for grave regret. It would be held to involve an admission that the great colony of Victoria was compelled to ask the Imperial Government to resume a power which, desiring to promote her welfare, and believing in her capacity for self-government, the Imperial Parliament had voluntarily surrendered, and that this request was made because the leaders of political parties, from a general want of the moderation and sagacity essential to the success of constitutional government, had failed to agree upon any compromise for enabling the business of the Colonial Parliament to be carried on.

"4. It is, nevertheless, important that the question should be settled as soon as possible where it can properly be dealt with, that is, in the Colonial Parliament; and I shall be glad if, by the observations which I am about to make, I can remove some part of the misunderstanding which has been amongst the chief obstacles to such a settlement.

"5. Following the generally-accepted precedent, the Constitution Act of Victoria established two Legislative Chambers, the Council and Assembly, and laid down to a certain extent their mutual relations; of which, it appears to me, a better definition rather than an alteration is now required. For as no party in Victoria desires to abolish the Council, I feel confident that there can be no wish, in the words of your ministers, to 'reduce it to a sham,' or by depriving it of the powers which properly belong to a second Chamber, to confer on the Assembly a complete practical supremacy, uncontrolled even by that sense of sole responsibility which might exert a beneficial influence on the action of a single Chamber. Nor can I suppose that the extreme view of the position of the Council, which it has recently to a great extent itself disclaimed, can be supported by any who have sufficiently examined the subject.

"6. The recent differences between the two Houses of Victoria, like the most serious of those which have preceded it, turned upon the ultimate control of finance. I observe that the address of the Legislative Assembly of the 14th February 1878 dwells almost exclusively on the necessity of securing to that House sufficient financial control to enable adequate supplies to be provided for the public service, and it is prominently urged in Mr. Berry's letter of 26th February, in proof of the necessity for finding some solution of the present constitutional difficulty, that 'scarcely a year passes but it becomes a question whether the supplies necessary for the Queen's service will be granted.' But this difficulty would not arise if the two Houses of Victoria were guided in this matter, as in others, by the practice of the Imperial Parliament—the Council following the practice of the House of Lords, and the Assembly that of the House of Commons. The Assembly, like the House of Commons, would claim, and in practice exercise, the right of granting aids and supplies to the Crown, of limiting the matter, manner measure, and time of such grants, and of so framing bills of supply that these rights should be maintained inviolate; and as it would refrain from annexing to a Bill of Aid or Supply any clause or clauses of a nature foreign to or different from the matter of such a Bill, so the Council would refrain from any steps so injurious to the public service as the rejection of an Appropriation Bill.

"7. It would be well if the two Houses in Victoria, accepting the view which I have thus indicated of their mutual relations in this important part of their work, would maintain it in future by such a general understanding as would be most in harmony with the spirit of constitutional government. But after all that has passed, it may be considered necessary to define those relations more closely than has been attempted here, and this might be effected either by adopting a joint Standing Order, as was proposed in 1867, or by legislation. Of these, the former would seem to be the preferable course, for there might be no slight difficulty in framing a statute to declare the conditions under which one House of Parliament, in a colony having two Houses, should exercise or refrain from exercising the powers which, though conferred upon it, must not always be asserted. But I must add that the clearest definition of the relative position of the two Houses, however arrived at, would not suffice to prevent collisions, unless interpreted with that discretion and mutual forbearance which have been so often exemplified in the history of the Imperial Parliament.

"8. If, however, it should be felt that the respective positions of the two Houses in matters of taxation and appropriation can only be defined by an amendment of the Constitution Act, there may be other points, such as the proposal to enact that a dissolution of Parliament shall apply to the Legislative Council as well as the Assembly, that might usefully be considered at the same time; but I refrain from discussing them now, feeling that their merits can best be appreciated in the colony itself.

"9. It has been urged that some legislation is necessary to insure mechanically the termination, after reasonable discussion and delay, of a prolonged difference between the two Houses upon questions not connected with finance I do not yet like to admit that the Council of Victoria will not, like similar bodies in other great colonies, without any such stringent measure, recognize its constitutional position, and so transact its business that the wishes of the people, as clearly and repeatedly expressed, should ultimately prevail; nor have I yet seen any suggestion for such legislation which I can deem free from objection.

"10. I hope that the views which I have expressed may not be without influence in securing such a mutual agreement between the two Houses as to remove any necessity for Imperial legislation, and that as both parties profess to desire what is reasonable, and as there has been now an interval for reflection, a satisfactory and enduring solution of the difficulty may be arrived at in the colony. The course of action which Her Majesty's government might adopt, should this hope unfortunately be disappointed, must in a great degree depend upon the circumstances which may then exist; but I can hardly anticipate that the Imperial Parliament will consent to disturb, in any way, at the instance of one House of the Colonial Legislature, the settlement embodied in the Constitution Act, unless the Council should refuse to concur with the Assembly in some reasonable proposal for regulating the future relations of the two Houses in financial matters in accordance with the high constitutional precedent to which I have referred, and should persist in such refusal after the proposals of the Assembly for that purpose, an appeal having been made to the constituencies on the subject, have been ratified by the country, and again sent up by the Assembly for the consideration of the Council.—I have, &c.,

"M. E. Hicks-Beach."

Accepting the statement that no one in the colony desired to "reduce the Council to a sham," Sir M. Hicks-Beach

was perhaps ignorant that Mr. Berry had declared in the Assembly: "We must have the power to coerce. The Council say they will not be coerced, but I say they must be coerced."

Admirable as the despatch was in many respects, it yet failed to recognize the fact that both Houses in Victoria were elected, that periodical elections brought public opinion to bear upon the Council as well as on the Assembly, and that the Council had passed, and the Assembly had refused to consider, bills for lowering the qualification of voters for the Council, and making more frequent the recurrence to their suffrages.

The new Governor, the Marquis of Normanby, in opening the Victorian Parliament (8th July 1879) announced that a reform measure would be submitted at the "earliest possible moment." The ministry had concealed many despatches, and the Council asked the Governor for such as he might feel "justified in making public" in relation to constitutional reform. On the 29th July they obtained them, and then for the first time became known the equivocal methods by which information had been conveyed to the Secretary of State. The Council again passed and sent to the Assembly its bill for extending the franchise for, and increasing the number of members of, the Council. Again the Assembly, though the session was prolonged for several months, disregarded the efforts of the Council.

Mr. Berry proposed an Upper House nominated by the Crown. He retained the *plebiscitum*, with regard to ordinary measures, but thought it dangerous to submit the wishes of the ministry on money matters to the vote of those who were unskilful in finance. The second reading was carried by 50 votes against 28, but after defections and disputes the bill failed on the third reading to secure the support of an absolute majority.

On 5th February 1880 the Parliament was prorogued with a view to a dissolution. Mr. Berry abandoned his proposal of a nominee Council, and predicted a crowning victory, but at the elections (28th Feb.) his majority disappeared. Previous casual elections had truly indicated a change in public opinion. The ministerial supporters were estimated at 37. The remainder of the House (49)

was composed of about 35 adherents of the leader of the Opposition (Mr. Service) in the previous Assembly, and a mixed band of a few followers of Sir J. O'Shanassy, and members whose views were unknown. Sir J. O'Shanassy had notoriously trafficked, in 1877, with those who chased McCulloch from public life. He demanded assistance to Roman Catholic Schools in the guise of "payment by results." Mr. Berry was said to have promised something, but he did nothing. So far as O'Shanassy could influence voters who were protected by the ballot he threw his weight in certain districts against Mr. Berry at the elections in 1880; and as soon as Mr. Service formed a government without pledging himself to adopt O'Shanassy's views, the latter cynically allied himself with Berry to destroy Mr. Service's ministry.

Mr. Service proposed to reduce the franchise for the Council from £50 to £10 on the ratepayers' roll, to increase the number of provinces, to reduce the tenure of seats from ten years to six, to give a power to dissolve the Council on occasion of unreconciled dispute between the Houses, and (if after a double dissolution harmony should not be attained) to make the two bodies sit together to solve their differences. Such a project threw overboard the ballast of the ship, and contained no guarantee for future stability. It banished from the Constitution the principle borrowed from America, which established a periodic and gradual re-composition of the Upper House in a manner which continually subjected it to the influence of public opinion, but guarded against its being overborne by gusts of passion. Mr. Service failed to obtain not only the statutory majority, but any majority at all. The second reading was rejected. A dissolution took place.

The fickleness of the crowd was shown. The constituencies which struck down Mr. Berry in February set him up again in July. It was in vain that Mr. Service, Mr. Murray Smith, and others proved that in his new proposals Mr. Berry had again changed front.[37] The faculty of lying was

[37] In June Mr. Berry denounced the lowering of the franchise proposed by Mr. Service for the Council. It would make that body dangerously powerful, and would be a "blow to manhood suffrage." Finding the people generally favourable to a reduction, he, after three days, advocated

winged by the facility of circulating lies, and cries were fabricated for use in the days immediately preceding the election in July. It was rightly reckoned that belief in them might be created, and that before the truth could be learned the poison might have done its work. In July Mr. Service's majority disappeared as Mr. Berry's had vanished in February. The retainers of O'Shanassy declared war against Service, and thus gave Berry a majority. The first act of the new drama was the election of Mr. P. Lalor, the rioter of 1854, as Speaker. In this O'Shanassy took an active part. The government made no opposition. But one member avowed that as a native of the colony he regretted "that to obtain the distinction of being Speaker of the House it is absolutely necessary that a man should be a rebel against the British Crown. . . . If no one else does so I shall oppose this election. . . . Things have come to a very sorry pass in Victoria when this takes place." These words were reported in the newspapers and in *Hansard*. Nevertheless Mr. Berry congratulated Mr. Lalor on an "unanimous election;" and the latter, whose duty it became to vouch and sign the official records of the day's proceedings, certified that his election had been unanimous.

The next act of the majority was one with which Sir J. O'Shanassy did not identify himself. It was customary to present the Speaker to the Governor. After compliance with such custom the Governor proceeded to the Council Chamber to declare the causes of summoning the Parliament. Until he had done so, in the colony as in England, neither House could undertake any business except such as might be incident to the Royal command, such as taking the oaths, choosing a Speaker, &c. Mr. Berry did not wait for an authorized opportunity. As soon as the Speaker had acquainted the Assembly that the Governor had officially received him, Mr. Berry moved a vote of want of confidence. Mr. Service pointed out that until the Crown or its representative had declared the causes of summoning Parliament no business could be done. But to prevent delay he was

the enfranchisement of every ratepayer throughout the colony. His reform schemes became so numerous that people forgot some of them.

willing to allow a vote of want of confidence to pass without debate at the proper time. He had met Parliament with a resolution to refute the slanders which had contributed to his defeat at the hustings. If the Opposition were willing to admit by silence that they were false he was willing to let them occupy the Treasury benches without discussion. Mr. C. H. Pearson assailed Mr. Service's proposition as an attempt "to compound a constitutional felony." Mr. Pearson would not thus "draw a veil of oblivion over all the corrupt acts of the last few weeks." Mr. Service was ready to debate the charges at the proper time, and having explained the Parliamentary position left the House with his friends. The new Speaker put the question. Mr. Service took no notice of the resolution, and the Governor formally declared the causes of summons on the 27th July without having been apprised by the ministry or by the Speaker of the impropriety to which the latter had lent himself. Mr. Berry at once moved a new motion of want of confidence without remark.[38] Mr. Service, true to his promise, permitted it to pass without discussion. Mr. Berry vainly strove to effect a coalition with members of the Service ministry, and then appealed to Sir J. O'Shanassy (who had in February helped to overthrow Berry, and in July to overthrow Service). Again unsuccessful he formed a ministry out of his friends of the Parliament of 1877. Some persons anticipated that the lawlessness of 1878 would be repeated in 1880 unless the existence of a stronger minority than that of 1878 should exercise restraint. Every indication of storm was in the air. A Payment of Members Bill was sent to the Council (Sept.) before a financial statement was made. Mr. Murray Smith vainly strove in the Assembly to divide the bill into two, so that the payment of each House might be considered separately. In the Council a conference was asked for, with a view to make separate bills. As the constituencies had not returned a

[38] Unwisely the Assembly stated in their address to the Governor that a motion of want of confidence had been carried before the causes of summoning Parliament had been declared. The Governor gravely regretted that he had been informed of the fact that so complete a departure from Parliamentary practice had occurred. Mr. Berry produced reasons for disagreeing with the Governor, but they were never adopted, though they remained long on the notice paper.

majority hostile to payment of members, some Councillors were willing to renew temporarily the payment for the Assembly, but would not consent that the Council should be paid. Rejection of the composite bill seemed assured. The periodic elections for the Council had taken place in August and September, and in all cases the chosen candidates were hostile to payment of members.

A Melbourne International Exhibition was to be opened on the 1st October. Internal discord would mar its prospects. On the 30th September Mr. Berry yielded to the demand of the Council. Brief conference between committees was held, and a separation of the bill into two parts was recommended. Within half-an-hour many who had opposed Mr. Murray Smith's proposition rushed to support it, and by 57 votes to 5 the object of the Council was accomplished. Separate bills were sent to that body forthwith, and without a division the bill to pay the Assembly was passed through all its stages, and the bill to pay the Council was extinguished. Universal approbation greeted the successful Council, and many were sanguine enough to think that the spectacle of one House labouring for the public good without fee might lead to a reformation of the other.

The hopes of lovers of disorder rested mainly on the reform question, so long debated without other results than paralysis of business, disturbance of the public mind, and arrest of private enterprise. The general elections of February and July 1880 had sanctioned neither the proposals of Mr. Berry nor those of Mr. Service. The constituencies had not accepted the idea of a *plebiscitum*. There were signs that they were weary of turmoil, and Mr. Berry's supporters in the House began to waver in allegiance.

The Council had transmitted their (Council) Reform Bill to the Assembly, and that body had, according to its custom, neglected it. Mr. Berry, on the 3rd March, carried the second reading of his Reform Bill without a division, and Mr. Murray Smith strove unsuccessfully to cause a reference of the two bills to a Joint Committee of both Houses. Mr. Berry's bill was read a third time (23rd March) with an absolute majority of the House. When it reached the Council the President, Sir W. H. F. Mitchell, ruled that

a bill dealing with the constitution of the Council ought in compliance with Parliamentary usage to originate in the Council, and that usage precluded the Council from dealing a second time in the same session with the subject already dealt with in the bill transmitted to the Assembly. Conferences were held in April, but apparently without result, yet many persons lamented that the labour of years should be thwarted by a difference of a few pounds in annual rating. A majority desired to force the ministry to deal with the matter at once, rather than retain it as a weapon for further offence. On the 2nd May the Council incorporated in the bill of the Assembly the provisions of its own bill, modified by the inclusion of propositions made in conference. In effect they substituted their own bill for that of the ministry.

The signs of the times were not lost among those who had supported the ministerial measures. The Council had not in vain presented the spectacle of a deliberative body declining to accept payment when the bill to sanction their payment was submitted to their decision. A conference was held upon the bills. Amendments made by the Council were rejected by the Assembly.

Another conference was held on 16th June. The managers recommended that the franchise of freeholders should be reduced to £10 (yearly value), and that of leaseholders and occupying tenants to £25 (annual value), in the electorates for the council. All the educational and professional qualifications were retained. The number of provinces (14) and the number of members for each (3), with a tenure for six years, were as fixed by the Council.

There were other amendments, but none that affected the principles of the measure of the Council. Warned by the wrong done to the Constitution in forming ministries without a responsible minister in the Upper House, the Council which had stipulated for such a functionary, yielded to representations that legal provision would be needless, because no future ministry would evade the requirements of the Constitution. The Assembly were so well content with the work of the conference that the resolution to return the amended bill to the Council was carried by 59 votes against 4.

The Council accepted the result. Mr. Berry made a fruitless effort to obtain credit for settling the question of reform. Sir B. O'Loghlen, on the 1st July, carried by 41 votes against 38 a resolution of want of confidence in the ministry. Mr. Berry applied in vain for a dissolution, and on his suggestion that he had a "right to demand a verdict from the constituencies," and that it was scarcely constitutional for a Governor to refuse a dissolution "to a minister asking for it," was astutely told by the Marquis of Normanby that—"If the principle were once admitted that a minister had a right to a dissolution whenever he saw fit to advise one, a vital blow would be struck at the power and independence of Parliament. The minister would then become the master of Parliament instead of the servant of the Crown, and the knowledge that a vote against the government might terminate its existence would act as a constant drag upon the independence of Parliament, and the exercise of that supervision over the actions of the government which it is its duty and right to exercise." Mr. Berry was silenced. Sir. B. O'Loghlen assumed control of the Treasury without salary, and was Attorney-General, and head of the ministry.

A member of the Council accepted responsibility as Solicitor-General, and was returned without opposition. Another member accepted a portfolio without office.

The Houses met on the 4th August. Addresses and a Supply Bill were passed without demur, and the Houses adjourned to enable the ministry to prepare their measures. The stumbling-block in the path of the ministry was the Education Act. To obtain public money, not for public but sectional uses, O'Shanassy, the Parliamentary leader of the Roman Catholics, had by turns intrigued against Mr. Berry and Mr. Service. When Berry formed his ministry in 1880 he endeavoured to make terms to propitiate O'Shanassy, but failed. The O'Loghlen ministry resolved to appoint a Commission of Inquiry as to the working of the Education Act. When the intended composition of the Commission was known, it was challenged in vain. Mr. J. W. Rogers, Q.C., became the chairman.

Two elections in December proved that constituencies ratified the verdict of the Assembly, and it was undeniable

that for a time the country was weary of turmoil and of those who promoted it. Confidence was restored, capital sought outlets, and enterprises were undertaken so rapidly that prices of materials sprang upwards, while on every side new buildings were erected.

Sir Bryan O'Loghlen passed a Loan Bill for four millions sterling without difficulty; and induced the Parliament to revive legislation against the Chinese, as the surrounding colonies were reviving it. On the day before Christmas the ministry entered upon the recess to which Mr. Berry had deemed himself entitled.

The elective Upper House of South Australia furnished a remarkable contrast to that of Victoria in relation to dealing with money bills. The difference was due partly to the fact that in South Australia the Constitution Act embodied only the restrictive provision as to the origination of money bills in the Lower House, which Wentworth had incorporated in the Constitution of New South Wales, and partly to the fact that the population of South Australia was less easily swayed than the large urban and goldfields' constituencies of Victoria. Nevertheless, at an early date the strife which arose afterwards in Melbourne began in Adelaide. It was lulled by the good sense of the community, which was not inclined to destroy, because of temporary friction, the component parts of a Constitution in which both Houses were elected by the people.

The Council in 1857 amended a Tonnage Duties and Wharf-leasing Bill. The Assembly resolved that it was a breach of their privileges "to modify any money bill passed by" the Assembly, and asked the Council to "reconsider the bill." The President of the Council, a lawyer, was asked to state his opinion. He showed that it was irregular to ask for reconsideration in the manner before him, and equally irregular for one House to acquaint the other "by what number any bill or resolution before them passes." In the Constitution the power of the Council was bounded only by the requirement that money bills were to "originate in the House of Assembly." In other respects the powers of both Houses were "co-extensive and co-equal." If further limitation had been designed it would have been carried out by express words, as in the case of Victoria,

where money bills might be "rejected, but not altered" by the Council. In Tasmania the Council, like that of South Australia, had altered money bills, including the Appropriation Bill. Legally, under the Constitution Act, the South Australian Council had full power to alter the bill. The restriction attempted to be imposed upon the Council by analogy with the Imperial Parliament was untenable. Nor had the House of Lords ever admitted the claims of the Commons except as to the origination of money bills. Moreover, the assumed right of the Commons was grounded on their representative character, and in South Australia both Houses were elected. The Council resolved that it had a right to do as it had done, and was "bound in justice to the people by whom it was elected to maintain their rights, and to exercise the power given to it by the Constitution Act;" at the same time it regretted that the Assembly had not adopted "the Parliamentary course of requesting a conference." The Assembly thereupon resolved that they had the sole right to tax, and that the Council could not alter a tax bill. There was subsequent conference, and a compromise suggested by the Council was agreed to. The Council contented itself with suggesting alterations in any money bill, "except that portion of the Appropriation Bill that provides for the ordinary annual expenses of the government." If suggestions should not be accepted, the original bill would be "assented to or rejected." While claiming "full right to deal with the monetary affairs of the province, the Council (did) not consider it desirable to enforce its right to deal with the details of the ordinary annual expenses of the government." It would demand a conference, to state objections and receive information, on an Appropriation Bill. The Assembly did not abandon its claims, but consented not to assert them, and the dispute created no confusion. The Assembly did not put forward the pretence that it was unconstitutional for the Council to do what the Constitution Act empowered it to do. Moderation prevented disorder in South Australia. Although in 1879 the Houses differed about the site of new Parliament buildings in Adelaide, the example of ministries in Victoria found no imitators, and the sobriety of the community was not shocked by lawless acts.

It could not be asserted that in intelligence or energy the inhabitants of Victoria were deficient. Previous pages have explained in what manner they allowed public affairs to fall under the control of the unfit. South Australia settled her disputes without appeals to the streets or to the Colonial Office. In 1881 it was resolved to divide the colony into four electoral provinces, to increase the number of members of the Council from 18 to 24, to diminish the term of office, and to render the Council dissoluble under certain conditions. If the Council should reject a bill passed by absolute majorities in the second and third readings in the Assembly, and—a general election for the Assembly[38] having intervened—should in a new Parliament reject such a bill again, it was made

"lawful for, but not obligatory upon the Governor to dissolve the Council and Assembly . . . or to issue writs for the election of one or not more than two new members for each district of the Legislative Council, provided that no vacancy . . . by death, resignation, or any other cause shall be filled up while the total number of members shall be twenty-four or more."

There was nothing in such a measure which even in the last resort subjected the Council to any other control than that of its own electors. The first addition to the House was made by elections by the whole colony as one province, and six new members were chosen out of fourteen candidates. The Act passed in 1882 remains in force.[39] The four provinces which elect the twenty-four members of the Legislative Council still exist. Electors having freehold of £50 value, or leasehold of £20 annual value, or occupying a dwelling of £25 annual value, have votes. For the Assembly voter, or for a member of the Assembly, no more is required than six months' registration and being twenty-one years of age. For both Houses, by a Constitution-altering Act (21st Dec. 1894), women have votes.

The direct influence of the new voters on legislation in the Council will probably be insignificant for a time, but

[38] In the Council the President sagaciously ruled that amendments involving "material alteration" must be passed by the absolute majorities required for the second and third readings of bills "effecting any alteration in the Constitution."

[39] "Australian Handbook," 1896, p. 334.

the reflex social effects of the indiscriminate suffrage for the Assembly can hardly be thought of without dismay.

The narrative of Tasmania is similar to that of South Australia. Law has been obeyed. The Constitution has not been violated by any turbulent or ignorant leader placed for a time in authority. The original franchise for the Assembly (£10) has been made to include all ratepayers without producing a desire for revolution. The franchise for the Council was reduced from £50 to £20 in like manner. The right to amend money bills allowed by the Constitution Act was maintained by the Council, and disputes between the Houses led to no public shame. The Constitution has never encountered conspiracies between ministries and their supporters to misconstrue or to overthrow it by force. Mr. T. D. Chapman, one of the advocates of Parliamentary privilege (at the time when Sir H. Young shielded Hampton from public scrutiny as to the Convict Department), after a long career in the Assembly, went to the Council, and was upbraided because there also he maintained the rights of the body to which he had been elected.

The Council insisted on its power to amend money bills. The Constitution committed the initiation of such bills to the Assembly, and the Council resolved to respect the Constitution. There were objectors who desired to transplant from Victoria the prohibition of amendments by the Council. But common sense prevailed. Governor Weld, in 1879, when asked to dissolve the Tasmanian Assembly, indicated the wholesome Parliamentary condition of Tasmania. "The question of the relations between the two Houses has indeed been raised, but it has not taken a substantial form, or become a line of party demarcation." It would have been impossible for Mr. Weld to make such a statement unless it had been true. It is impossible to read it without perceiving how unwise were the framers or adapters of the Constitution of Victoria in depriving the second elected Chamber of that power to amend money bills which was advantageously exercised not only by other elected Chambers responsible to constituents, but by members of Houses nominated by the Crown.

Mr. Chapman bore the brunt of attacks upon the Council. His critics upbraided him for championing the privileges of the Upper House as vehemently as he had supported those of the Lower, but public opinion rejoiced rather than grieved at the existence of two Houses intent upon economizing the funds. When men looked across Bass's Straits to Victoria they found motives for abiding by the Constitution of Tasmania.

Mr. Weld had to deal with the delicate question of wielding that "great instrument in the hands of the Crown,"[40] whose use by the representative of the Crown sometimes involves intricate considerations.[41] In 1877 he was assailed for granting a dissolution, but his conduct was approved in Downing-street. In 1879 he was pressed to dissolve the Assembly by a ministry from whom the Assembly had withdrawn its confidence, and the head of which had been specially censured in the Council. They wanted to submit "to the country" a new financial policy. Mr. Weld declined to dissolve the House; the ministry resigned, and the maintenance of office by their successors fortified the Governor's decision.

After acting for the second time as administrator of the government by virtue of his office of Chief Justice, Sir Francis Smith in 1880 resigned the reins to the accomplished Sir Henry Lefroy, who by an unusual arrangement was sent from England to hold them until Sir G. C. Strahan, the newly-appointed Governor (detained by untoward events in South Africa), could assume office in Tasmania. In all these cases it was seen that, though agitators denounced any dependence upon, or connection with, the remote mother country, the girdling of the earth by the obedient pulse of electricity had banished inconveniences of space, and placed at the disposal of the Crown for peculiar need any British subject, however distant he might be when the word of command was flashed to him. Thus was Sir

[40] Sir Robert Peel, 1846.

[41] "A constitutional Governor is personally responsible to the Crown for his exercise of the prerogative right of dissolving Parliament; and he is bound to have regard to the general condition and welfare of the country, and not merely to the advice of his ministers, in granting or refusing a dissolution." "Parliamentary Government in British Colonies," p. 588. Todd. London: 1880.

Hercules Robinson summoned from New Zealand. Thus was Sir G. Strahan retained in Africa to act as High Commissioner until relieved by Sir Hercules Robinson.

It devolved upon Sir J. H. Lefroy to observe the seething of the limited discontent which disappointed men had been able to stir up against the Constitution, whenever they failed to carry a measure. Mr. Giblin, in 1881, formulated his complaint against the Council in the usual manner. Within three years it had laid aside and rejected, at the request of Mr. Chapman, ten financial measures. Averring that every Upper House in a British community must be *ipso facto* barred from giving effect to its judgment on financial questions, Mr. Giblin asserted roundly that the intention of the framers of the Tasmanian Constitution was to limit the powers of the Council conformably to Mr. Giblin's views.

A modern wit has advised that no man should prophesy until he knows the result. It was unwise of Mr. Giblin to speak for the framers of the Constitution while they were yet alive. The Attorney-General of 1856 had become Chief Justice, and his office might restrain him from interposing. But the Colonial Secretary of 1856, Colonel W. T. N. Champ, was under no such constraint. He had long resided in Victoria, and he sent thence a refutation of Mr. Giblin's statement. As "one of the framers of the (Constitution) Act," he denied that they had any intention to legislate in the manner imputed to them. He "was head of the first ministry that administered the Act, and never entertained a doubt but that the new Legislative Council possessed, and would exercise at their discretion, all the powers now objected to by Mr. Giblin." They had exercised them continuously, and whether it was desirable or not that their powers "should be curtailed as suggested by Mr. Giblin," Colonel Champ remarked that "delightful" Tasmania, and its peaceful, "happy and prosperous community have been spared the political storms that have so, almost continuously, clouded the atmosphere of Victoria, creating discontents and animosities," &c. It was well that a responsible framer of the Tasmanian Constitution was ready to condemn Mr. Giblin's pretensions, and to show that in the one colony in which power of the second

Chamber to alter a money bill had been forbidden by statute, there also, and there only, had there been any stoppage of legislation, any refusal to discharge public debts, any array of class against class, any lawless acts done by ministries in violation of the Constitution. Many colonists agreed with Colonel Champ. A Tasmanian newspaper, commenting on his letter, confessed that the Constitution contained "all that is necessary to the good government and happiness of the people."

The remonstrances of Sir W. Denison, against rendering the Upper House in Queensland liable to such an experiment as that by which Mr. Cowper urged him to overbear the Council in Sydney in 1858, ensured some forethought as to the formation of the new Legislature when the district of Moreton Bay, by severance from New South Wales, became the colony of Queensland in 1859. It was held by the law officers in England that the Constitution of the new colony ought, in deference to previous enactments and pledges, to be "generally similar" to that of New South Wales,[42] and the Council was nominated by the Crown. The new Governor was Sir G. Bowen, who, after being President of the University at Corfu, had become Secretary to the Government of the Ionian Islands in 1854. Thence he was translated to Queensland in 1859, and Lord Lytton, who appointed him, furnished at the same time a didactic essay upon the duties of a Governor politically, socially, and in deportment. At the same time Sir C. Nicholson, formerly Speaker of the single Chamber in New South Wales, was induced by the Colonial Office to become President of the nominated Upper House, and thus a guarantee was afforded that a knowledge of Parliamentary usages would supply the sagacity which Lord Lytton's phrases might have failed to inculcate. Sir C. Nicholson, who had recently been made a baronet, obeyed the Royal wish. It cannot be doubted that his abilities were useful in moulding the forms of the Queensland government. When he quitted his post he was succeeded by Maurice O'Connell, a son of the officer who married the daughter of the deposed Governor Bligh. In 1861 the attempt to over-

[42] Despatch, 13th July 1857. Secretary of State to Governor Denison, Parliamentary Papers, vol. xli. 1857-8.

whelm the Upper House in Sydney with Sir J. Young's complicity, took place, and warned the northern colony of danger. No transient differences between the two Houses have arrested public business or disgraced the public credit in Queensland, and the Upper House has never condescended to accept payment of members.

Although goldfields attracted many miners, the vast extent of the colony prevented them from exercising the same influence in politics which their congeners in Victoria had brought to bear. Yet the suffrage for the Lower House was, in 1872, brought down to all registered males, with the sole qualification of six months' residence.[43] It is difficult to kindle misplaced enthusiasm rapidly in a territory comprising more than 600,000 square miles, with goldfields widely scattered therein; and Queensland did not suffer the pangs which overtook Victoria, which contains less than 90,000 square miles. Neither did population swarm into Queensland as into Victoria.

The smaller populations of South Australia, Tasmania, and Queensland have perhaps their circumstances to thank for immunity from evils which scourged their neighbours. New South Wales also, though populous, was of wide extent, and dispersion of her people in various distant localities caused numerous interests to be combined in her Legislature, where the resultant of forces necessarily takes a more wholesome direction than if one or two overpowering classes could annihilate all weaker influences. Careless observers may deem the ancient English principle of representation a mere representation of numbers. Designing demagogues aim at perverting it into such a representation. The sage historian[44] teaches us in his searching study of the Constitution to find, not in class or numerical, but in local representation, the healthy germs of British progress; and the physical condition of New South Wales exempted her in part from the evils which a narrower compass enabled the designing to impose upon Victoria.

Western Australia, largest in area, but containing in 1879 less than 29,000 souls, affords little occasion for

[43] At the same time the former qualifications were retained as alternatives. But a voter had only one vote in any electorate.

[44] Stubbs, "Constitutional History of England," vol. ii., p. 161.

comment at the epoch under review. Some aspiring spirits yearned for representative government, but found no sympathy while the Imperial Government was compelled to assume responsibility and incur expense, and while the introduction of convicts threatened to disqualify the population for a wholesome exercise of the suffrage. On Governors fell the distasteful task of gaoler, as well as the nobler one of legislating. With the close of the government by Mr. Hampton, transportation to the colony was discontinued. The new Governor, Mr. Weld, honourably known in New Zealand, was destined to introduce a change in administering the government of Western Australia. He found an Executive Council appointed by the Crown, and a Legislative Council in which five official members sat with five unofficial members, appointed by the Crown. In 1870 a new Legislative Council assembled. Two-thirds of its eighteen members, like those of its predecessor in Sydney in 1843, were elected, but upon a £10 instead of a £20 suffrage. Three official members, and three unofficial, were also nominated by the Crown. Soon afterwards the total number was raised to twenty-one, of whom fourteen were elected. These changes were popular, but they whetted the public appetite for more. England planted, as usual, only one of the seeds of her own form of government, and the natural crop was produced. Diffusion and degradation of the suffrage—the concentration of all power in the hands of those delegated by numbers—were pronounced to be the only portals to happiness. Nor was the Western land unmoved by other grievances complained of in the East. The dwellers at Champion Bay demanded separation. They dreamed that revenues insufficient when undivided would confer greater benefits if compelled to bear the weight of two separate governments. Aided so often and so much by Imperial funds, they had not felt the responsibility of self-dependence, nor the accompanying pleasure of complying with it, and they did not count the cost of their demands.

Mr. (afterwards Sir) William F. C. Robinson succeeded Mr. Weld (1875), and a resolute effort was made by the advocates of responsible government. They received support from the energetic Mr. F. P. Barlee, who had been

Colonial Secretary for twenty years, and whose services were highly esteemed. The popular outcry waxed in strength. Mr. Barlee introduced a bill, but prudent persons doubted whether a community of 26,000 persons, of whom nearly a fifth were supposed to be, or to have been, convicts, was ripe for governing a third part of Australia. The Speaker of the Legislative Council (now Sir) Luke Leake, confessed that, in his opinion, the time had not arrived for so momentous a change.

Lord Carnarvon (Aug. 1875), avowing a predilection for responsible government, could not resist the conclusion that the small number of persons who constituted "the unconvicted male[45] population of the colony (. . . some three or four thousand)," were unfitted to govern a territory stretching far into the tropics, where "coloured labour" was already employed. Governor Robinson personally concurred with the Secretary of State, but the rash rebelled against the reason of the wise.

In 1878 Mr. S. H. Parker renewed the attempt to obtain responsible government as asked for in 1875. The "earliest possible period" was, in Mr. Parker's opinion, the best. But Mr. M. Brown and Sir T. Cockburn Campbell saw danger in accepting hastily so costly a responsibility. They moved amendments warning the Home Government that unless vexatious Imperial interference with details were discontinued the demand for responsible government would gather strength. By 13 votes against 5 the Council resolved to adhere to present woes rather than fly to others. The Governor congratulated the members at the close of the session on their sagacity in dealing with the "serious issues" and "hazardous changes" put before them, and their refusal to allow their "judgment to be swayed by external influences."

The discovery of an unexpected deficiency of £30,000 in the revenue during the government of Sir Harry Ord spurred on the opponents of the existing form of government. On his voluntary retirement (1880) his predecessor,

[45] Elaborate statistics furnished by the Governor (Oct. 1875) indicated more than 5000 adult males who had been convicted; and 3009 of "unconvicted male population of 21 years and upwards, from which a Parliament could be chosen."

Sir W. Robinson, again became Governor. At a general election early in 1880—assuming, of course, the often-profaned name of "liberals"—the advocates of change strove to elect a majority determined to demand self-government. But they could command no more than five of the fourteen elected members, and as the Crown appointed the remainder of the House, the lovers of new things were computed to be less than a fourth part of the House. They hoped, however, that Mr. Gladstone's accession to office would be marked by a change of policy, and were dismayed when they found that if they should obtain responsible government it would be at the cost of separation of their northern territory. A newspaper correspondent lamented that Lord Kimberley could be so ignorant as to suppose that Western Australia would "accept self-government coupled with such a terrible sacrifice." Pearls on the coast and the fine pastures of the Fitzroy would thus be torn from the colonists, who would be left to their barren territory infested with the poison plant.

Sir W. F. C. Robinson, on being transferred from Western Australia to South Australia in 1883, congratulated his Western friends on the fact that their exports (£502,769) exceeded their imports (£404,831), and that he left them a substantial balance of £32,000 in the Treasury; a sum which, though small in itself, bore a large proportion to the expenditure of the year (£205,451).

Succeeded by Sir F. N. Broome in 1883 he again succeeded Sir F. N. Broome in 1890, and on retiring in 1895 was succeeded by Sir Gerard Smith. The material progress of the Australian colonies, after they assumed the control of their revenues, is illustrated by their statistics and the amount of their debts. The conditions on which the higher welfare of a community depends demand special attention. State aid to churches was at an early period withdrawn from all the colonies. Sir R. Bourke's Church Act, which commanded veneration in 1837 in New South Wales, and extorted admiration from Dr. Lang, was doomed to lose not only his allegiance, but that of a majority who had not, like him, become hostile only on ceasing to derive incomes from it. The grant guaranteed in the Constitution Act of New South Wales, for religious purposes, was not aban-

doned by the Upper House without a struggle, but it was repealed in 1862 with a proviso maintaining existing life-interests. With the exception of such diminishing remnants of aid, voluntary support maintained the machinery of the various Churches in Australia, and a sketch of their condition cannot but be interesting to a student.

The Church of England in New South Wales, whose bishop at one time was Bishop of Australia, soon contained many dioceses in the narrower limits to which New South Wales was confined after the severance of Port Phillip and Queensland from the parent colony. In populous districts the various religious bodies could do much to supply religious ministrations; but on the outskirts of the colony it was ever a life-and-death struggle to do so. A sparse population, scattered over a large area, could neither gather in one place nor combine its resources, and could only be visited by peripatetic ministers supported by Christian love of distant friends. None but those who visited the outlying districts could fully appreciate the sore need which existed; but many contributed who had not visited them.

The difficulties of the case stirred some members of the English and Scotch Churches in Victoria to create a Pastoral Aid Association, under whose care subscriptions from members of both Churches were administered in common in remote districts. The same places of worship were used in turn by ministers of each Church periodically; and thus, with a limited expenditure, the ordinary ministrations of each were more frequently supplied than would otherwise have been possible; while neither Church obtained less veneration because both thus strove to perform their Master's work. The "Victorian Year Book" for 1893 tabulated thus the statistics of the religious bodies in Australia in 1892:—

	Church of England.	Presbyterian.	Methodist.	Other Protestants.	Roman Catholics.	Jews.
New South Wales ...	272,009	59,438	56,358	34,364	149,390	3,038
Victoria	219,573	86,665	78,297	49,246	126,017	3,540
Queensland	79,814	25,473	16,073	28,077	48,688	483
South Australia ...	46,718	9,491	37,757	33,840	23,626	436
Western Australia...	14,640	1,286	2,443	1,323	7,127	82
Tasmania	40,401	4,957	8,657	5,458	13,210	55
Total	673,155	187,310	199,585	152,308	368,058	7,634

The system of government for the Church of England through an Assembly of the clergy, and of laymen elected in every parish, was adopted (for the first time in Australia) in the diocese of Melbourne in 1854, under the care of the first Bishop, Dr. Perry. The local legislature passed an Act (prepared by the Church of England Assembly) which was in effect a declaration that the members of the Church might manage their own affairs, as any other religious denomination could manage its own; but the provident Bishop, with aid of voluntary representatives who assisted in maturing the proposed measure, guarded against any assumption that the law interfered with, or could be construed as enabling the members of the Church to interfere with, their standards of faith. With recognition of law, however, they met freely to manage their temporalities, and elect their various functionaries, who were thus not outlawed as they might have been if (when the Privy Council decided that the Queen could not appoint or control bishops in colonies possessing representative government) the members of the Church had been deemed incapable of that government *inter se* which was freely accorded to other religious bodies and to societies and corporations. Synodical action was afterwards adopted in South Australia (1855); Tasmania (1858); New South Wales (1866); Queensland (1868); Western Australia (1872). A Provincial Synod, meeting once in three years, was established in New South Wales, where dioceses were sufficiently numerous to constitute an ecclesiastical province. A General Synod, consisting of the Bishops of Australia and Tasmania, and of laymen elected by the representative bodies in each diocese, was created by mutual compact; and the priority of the oldest seat of an Australian bishop was recognized by ascription of the office of Primate to the Bishop of Sydney.

If less detail be given of the polity of the members of the Church of Rome than of others in these pages, the explanation that it is derived from abroad might be sufficient, even without the addition that an Englishman might erroneously describe that which has its foundations in a foreign land.

The Presbyterians in Victoria, and the Wesleyans, have many ministers, and it would be difficult to exaggerate the results of the labours of either body in meeting the require-

ments of their people during the turmoil consequent upon the rapid influx of population on the discovery of gold. Ormond College, affiliated to the University of Melbourne (1881), was founded by Mr. Francis Ormond at great cost, and while doing so much for his own, the Presbyterian, communion, he found it in his heart to promote the building of a cathedral for the Church of England by a timely gift of £5000. The Congregationalists, the Baptists, and Primitive Methodists provided many ministers and places of worship in Victoria.

In Queensland the Church of England adopted, by voluntary compact, a Synodical constitution in 1868, but paid tribute to mundane necessities by incorporating itself by virtue of Letters Patent under an Act of the local legislature (1861) with regard to religious, educational, and charitable institutions. The Bishop of Brisbane in 1882 was Dr. Hale, who laboured long on behalf of the aborigines in South Australia, at Poonindie, and elsewhere, before he became Bishop of Perth in Western Australia in 1857. Thence he was translated to Brisbane in 1875. A bishopric was created in North Queensland in 1878 to narrow the enormous area over which he presided.

Under its first Bishop, Dr. Short, the Church of England in South Australia was organized with a governing Synod.

Western Australia, vast in extent, had in 1891 one bishopric of the Church of England—Perth; and eighty-three churches.

Tasmania had a bishopric of the Church of England before the Tasmanian Church adopted synodic government in 1858.

In New South Wales the University had affiliated colleges, severally founded at an early date, for the Churches of England and Rome, and for the Presbyterians. Victoria in 1853, South Australia in 1874, and Tasmania in 1890, founded Universities, which were stated[46] to be thus endowed and attended in 1890 and 1891:—

	Government Endowment.	Lecture Fees.	Other Sources.	Total.
Sydney	.. £18,300	£7,262	£11,694	£37,256
Melbourne	.. 16,500	14,959	816	32,275
Adelaide	.. 3,207	3,205	5,220	11,632

[46] "The Seven Colonies of Australasia"—T. A. Coghlan, Government Statistician, New South Wales.

The students attending lectures in 1891 (in Melbourne 1890) were, in

	Matriculated.	Not Matriculated.	Total.
Sydney	.. 478	352	830
Melbourne	.. 563	7	570
Adelaide	.. 110	136	246
	1,151	495	1,686

Munificent bequests and donations have been made to the Sydney and to the Adelaide Universities. In Tasmania a Council of Education for some time conferred degrees of A.A., or Associate of Arts, after examination. It was felt, however, that small as was her population, it ought if possible to enjoy at home the privileges for which it had been dependent upon neighbours. Sir W. L. Dobson drafted a bill (1884) for founding a University, and his labour was not in vain. In 1890, a "Tasmanian University Act (1889)" came into force, and Sir W. L. Dobson was elected Chancellor.

The first degree conferred in Arts refuted arguments which had been used against establishing a University in the Island.

Mr. Samuel Picken, the first graduate of the University, had read for his degree at Launceston without being called upon to visit Hobart. His example ought to stir emulation among the youth of the colony, and constrain its rulers to make the efficiency of the University a prime object of their care.

The tendency of legislation on State-schools has been cognate in most Australian colonies, though diverse in details. Mr. C. Cowper (a supporter of denominational education), incorrectly estimating public opinion, was no sooner installed in office in New South Wales (1857) than he thwarted the efforts of the Board of National Education, of which Mr. Plunkett was chairman. Plunkett had forwarded for promulgation some new rules adopted by the Board with regard to non-vested schools. Cowper declined to recognize them, on the ground that the Board had exceeded its powers. Plunkett with scorn, if not petulance, denied the propriety of Cowper's interference, and Plunkett's letter appeared in a newspaper. Cowper "dispensed with Plunkett's further services." The latter pro-

tested against his "removal by a fraction of the Executive Council," and resigned his commission as a magistrate and every office held at pleasure of the government, "the reign of terror" having commenced. To the Governor he tendered his resignation of the office of President of the Legislative Council, and his seat in that body, and Sir. W. Denison accepted the resignation "with extreme regret." Another member of the Board, Mr. G. K. Holden, tendered his resignation on the ground that he had been identified with Mr. Plunkett's conduct. Petitions vainly prayed for Plunkett's reinstatement. Though triumphant for the time, Cowper had prepared for himself future trouble, which, if he had comprehended the popularity of the national system, or the esteem entertained for Plunkett, he would have striven to elude. A general election in 1859 revealed his blunder; and the marked defeat of an Education Bill which he introduced in the new Parliament caused his downfall. Subsequently the two systems of education, national and denominational, contended side by side until 1866.

In September of that year Mr. Parkes, Colonial Secretary, in an administration of which Mr. James Martin was the head, carried a Public Schools Bills which gathered into one channel the public efforts. The time had come for change; and in the land where Sir R. Bourke had been prevented from sowing the seed Mr. Martin's ministry reaped the crop. There were at the time 385 National Schools, containing 18,126 scholars; and 445 Denominational Schools, with 23,746 scholars. The startling fact that there were computed to be 100,000 children "receiving no education whatever" was accepted by the House as a challenge for legislation. The bill retained the just provision, of the existing National Schools, that while four hours should be devoted in the day to secular instruction, clergymen or others, authorized by parents or guardians, should find facilities for imparting at the school building the special religious teaching which the State was debarred from providing. It was not proposed to abolish the payment of fees, and thus to demoralize the parents while taxing the public. A Council of Education was formed with large powers. Half-time, and provisional schools, could be set

on foot to meet the wants of some of the untaught 100,000 children scattered in secluded places.[47] The effect of the Act was rapidly shown. The number of private and public schools in the colony in 1865 was returned as 1067. The teachers were 1467, the scholars 53,453. In 1875 the corresponding numbers were 1586, 2542, and 127,756. The readiness of parents to pay school fees was shown by the sum (exceeding £73,000) paid in 1879. Buildings were supplied by the government. The total grant for education was £350,000 in 1879, and in 1879 Parkes, as head of a ministry, introduced a measure (a Public Instruction Act) extending the principles of the Act of 1866. A Minister of Public Instruction was created. Secondary schools were provided for. In State schools, under a conscience-clause, religious but "non-sectarian" teaching was accessible, and the inspectors examined the scholars to the satisfaction of the parents. The Scripture lesson-books (sanctioned by Archbishop Whately and Dr. Murray) were used; and class-rooms, in which special religious instruction could be given by the friends of the children, were guaranteed. Education at some school, or in some manner, was made compulsory, but it was not made free, though Parkes reduced the school-fee so largely that the amount of fees in 1881 fell to £46,347, there being then an aggregate attendance of 146,106 scholars. The discontinuance of public aid to denominational schools was provided for, and at a general election in 1880, the constituencies unequivocally pronounced in favour of the Act.[48] In 1891 there were 2457 public schools with an average attendance of 122,528 children.

There are not many occasions on which a Governor can stamp the impress of his own mind in a colony possessing responsible government. There are many in which by a

[47] The ministry which passed the Act was composed of Mr. Martin (Chief, and Attorney-General), Mr. Parkes, Mr. Joseph Docker, Mr. G. Eagar, Mr. J. B. Wilson, Mr. J. Byrnes, and Mr. R. M. Isaacs (Solicitor-General).

[48] Dr. Vaughan, a Roman Catholic dignitary, denounced the bill in public as "the most ingeniously devised piece of scientific persecution that has been invented in modern times." Oblivious of Smithfield and the Inquisition, he compared the schools to the "Scavenger's Daughter," of infamous repute amongst instruments of torture.

refusal to do wrong he can prevent others from violating the law. Sir W. Denison placed his acknowledged ability at the disposal of the colony by advising upon all general subjects without constituting himself the advocate of any person or party. He presided over a Philosophical Society. When, before the separation of Moreton Bay was accomplished, efforts were made to attract convicts thither, he warned the Secretary of State that it would be unwise to sanction such a scheme. There would be a large expenditure, and when it had been incurred the antipathies of the people would be aroused, "and the story of Van Diemen's Land would be repeated." He went to Norfolk Island in 1857, when a Royal Order had vested the government of the descendants of the mutineers of the *Bounty* in the Governor of New South Wales. He drew up a code for their government, and retained in it some of the quaint provisions which they had devised at Pitcairn Island for themselves. He went to New Zealand for supplies for his little island, and gave advice to Colonel Gore Browne which ought to have averted the war commenced at the Waitara. When that crime was perpetrated Sir W. Denison gave warnings to Colonel Browne and to the Secretary of State which ought to have prevented the spread of mischief.[49] He resisted the efforts of a ministry in 1858 "to swamp the Upper House."[50] He warned the Secretary of State of the necessity to guard against the occurrence in Queensland (where a nominee House was about to be created) of such an assault upon the Constitution as was afterwards foiled in New South Wales. He urged the English government to be scrupulous, when reconstituting the Upper House on a permanent basis, to provide that the new members nominated for life should be representatives of the colony, and not of a party. He deprecated the languid virtue of public men in England, who would countenance measures tending "to promote

[49] A despatch from him to Governor Browne appeared in the Parliamentary Papers. In a private letter to Sir Roderick Murchison, Sir W. Denison touched upon the ill-omened cause of the war of 1860. "The treatment of the natives by the whites has been such as would naturally induce the conduct which we designate as rebellion; and, to tell you the truth, I believe that it was intended that such should be the result." ("Varieties of Vice-regal Life," by Sir W. Denison. London: 1870.)

[50] Confidential despatch to Secretary of State, 5th April 1858.

separation" of the colonies. When urged by Mr. Cowper to dissolve the Legislative Assembly in 1860, and to meet public requirements by payments unwarranted by law, he declared that after a certain date he would sanction no disbursements unauthorized by regular Appropriation Acts. When after correspondence about the issue of a Crown grant (promised long before by a previous Governor) he received instructions to issue it, and Mr. Cowper (then member of a Robertson ministry) refused to affix the public seal, the resolute Governor desired him to hand the seal to him, and with his own hand sealed the grant.[51] His high character maintained respect amongst those who denounced his acts. Vehement as had been the opposition to his policy as Governor in Tasmania, there was no personal ill-will to the man, and when he left Sydney the demonstrations of public esteem were mingled with signs of affection.

Of Sir John Young's career little need be said. He arrived after responsible government had been established for years, and little was expected from him in influencing the fortunes of the colony. But he had been a member of the House of Commons, Chief Secretary for Ireland, and Lord High Commissioner of the Ionian Islands. How he disappointed expectations, and how he repented, has been told. The Earl of Belmore succeeded him, and with regard to nominating members of the Council upheld the understanding arrived at by Sir J. Young under the auspices of Wentworth. He called attention to a laxity of practice with regard to public payments. Sir W. Denison's discouragement of irregularity in 1860 was exceptional, and after votes had been passed in the Assembly it had become common for the Governor-in-Council to authorize payments in anticipation of the sanction of those votes by the Legislature. Sir W. Denison had, like Sir J. Young, complied with the custom, which originated with a ministry

[51] There was much commotion as to this act. The Robertson ministry resigned on account of it (9th Jan. 1861). But on the following day Cowper became the head of a ministry in which Robertson, and every other member of the Robertson ministry, including Cowper, resumed office. The Parliament met on the 10th January, and (Sir W. Denison having left the colony to become Governor of Madras) it was proposed to censure him for sealing the grant. The previous question shelved the proposal.

of which Cowper was the head in 1858. Lord Belmore consulted the Secretary of State in 1869 as to his responsibility in countenancing so loose a practice, and was told that he could not legally do so, nay, more; unless under supreme emergency he was bound to refuse to sign irregular warrants if put before him.

In reply to remonstrance from Mr. Robertson against interference with local matters, "entirely unconnected with Imperial interests," Earl Granville (Jan. 1870) admitted that the matter was local, but not that the Governor could escape personal responsibility. The Constitution Act expressly declared that no part of the revenue should be "issuable except in pursuance of warrants under the hand of the Governor." The noble lord trusted there was "little chance" that (as suggested by the Treasurer) adherence to instructions might embroil the Governor with his ministers. "I should deeply regret it. But in so painful a contingency it would be better to be in collision with your advisers than with the law." A change in that law, or an address from both Houses, might relieve the Governor of responsibility. "Whatever is the decision of the colony, you will be bound to defer to it." Meantime the Governor must do his duty. In the last resort he was "the judge of his own duty, and was not at liberty to sign the warrant required . . . by the Constitution Act," if clearly convinced that to do so "was to violate the law. . . . The fact that the custom of Parliament in this country precludes the House of Peers from altering a money bill does not warrant the conclusion that the Council in New South Wales should be deprived of the power of rejecting one, a power which undoubtedly belongs to the peers in this country, but which would be taken away in New South Wales if the ministry had the power of spending money indefinitely on a vote of the Assembly." The colonists should remember that when by their own legislation they imposed duties on the representative of Her Majesty, it was for that representative to do his duty, and for them to support him.

When Lord Belmore suggested certain amendments in a bill to regulate the audit of accounts, and the bill was modified to meet his recommendations, it cannot be

denied that he laid not only New South Wales, but the Empire, under an obligation, by obtaining a decision on the question. There had been many who had not weighed its importance, though governing different colonies successively. Even Sir W. Denison had fallen in with evil practices, although he once confounded a minister by declaring that he would not dissolve the Assembly without lawful procurement of funds. Lord Belmore on his first assumption of office saw the danger of irregular practices, and—as far as one man could—guarded against them. If he had done nothing else he would have deserved the gratitude of the colonists. He resigned office in 1872.

His successor was Sir Hercules Robinson. He held that a Governor, while giving loyal support to ministers, was in no manner barred from expressing his individual opinion on questions of moment. He adhered to "the understanding between the leading politicians in 1861" as to the construction of the Upper House. He resisted random dissolutions of the Assembly at the request of impatient ministries unable or unwilling to obtain supplies. To Sir H. Parkes and to Sir J. Robertson, rival framers of Cabinets in 1877, he showed the same firm front. Willing to dissolve, he reserved the right to reconsider the subject in the event of a refusal of supplies. Having disposed of his difficulties without appealing to England for advice, he thought them, on general grounds, deserving of consideration by the highest authorities on such subjects. Lord Carnarvon consulted the Speaker (Mr. Brand) and Sir Erskine May. The question was whether a Governor was bound to accept or reject advice unconditionally, or whether he was justified in demanding that supply should first be obtained. His conduct was sustained by the authorities consulted. Mr. Brand (pointing out that under the bad practice of "deferring supply" the Governor ceased to be independent, the ministers were hampered by the constant need of temporary Supply Bills, and the House had an inducement to "stop supply" to prolong its own life) hoped that recent complications would lead to "voting supplies more in accordance with the practice of the mother country."

Lord Belmore had with the concurrence of his ministers (Robertson, &c.) submitted to the Secretary of State a

question as to the exercise of the Royal Prerogative of mercy. Ought the Governor to act upon his independent judgment, or ought he to be guided by ministerial advice? There was diversity of practice in different colonies. A man like Sir W. Denison would on all occasions weigh the circumstances of each case. Sir G. Bowen in New Zealand, when Messrs. William Fox and Julius Vogel kept the keys of his conscience, left "signed pardons in blank to be filled up and used during his temporary absence."[52] Royal Instructions commanded the Governor to extend "or withhold a pardon or reprieve according to his own deliberate judgment, whether the members of (the) Executive Council concur therein or otherwise." Lord Granville told Lord Belmore in 1869 that he had a right to exercise his own judgment, but ought to allow weight to ministerial advice. Lord Kimberley (1871) diluted, without withdrawing, his predecessor's prescription. Sir H. Robinson found in 1872 that Lord Granville's decision was so ungrudgingly accepted in Sydney that the Governor in all except capital cases was expected to exercise the prerogative without responsible advice. He thought it desirable to obtain such advice on all acts he had to perform, and applied for further instructions.

Lord Kimberley (1873) defended his former despatch, and added that the Governor, compelled to receive advice in capital cases, might secure it in others in the most convenient manner. A sagacious colonial minister might well prefer that the prerogative should not be under the control of a local politician. Pressure of party friends might warp justice; or, if not complied with, might breed ill-will. Nevertheless, Sir Hercules expressed a desire that in all cases written advice should be tendered by a responsible minister, and the ministry of Mr. Parkes formally con-

[52] Todd. "Parliamentary Government in the Colonies," p. 258. 1880. He does not mention the name of the Governor, but fixes the date. The practice was older than the term of Sir G. Bowen. A memorandum written by Mr. Gisborne (Colonial Secretary), in New Zealand, declared:— "It has been usual during the present and former administrations of Governors to entrust to the responsible advisers of the Crown signed blank pardons for exercise on their responsibility in the case of the absence of the Governor from the seat of government. This practice is essential to the proper administration of justice, as the immediate release of prisoners is often necessitated, &c."

curred in June 1874; although Parkes pointed out that the refusal of a Governor to accept advice would involve a minister's resignation; a conclusion which Sir Hercules could not rebut. He thought, however, that though true theoretically, the objection would practically vanish with regard to trivial cases.

Lord Carnarvon (Oct. 1874) commended the course adopted. It left the Governor "actually as well as formally . . . responsible for the exercise of the prerogative," but imposed upon him the duty of "consulting his minister or ministers" before deciding. Thus, the matter was theoretically set at rest. Practically, there had been trouble on the subject. Mr. Robertson's baneful "free selection of land before survey" had studded the country with dens in which horse-stealers and other criminals found harbour. One of them had organized a gang of robbers, and after many atrocities, had left his comrades and decamped with booty to Queensland, where in a remote spot he kept a store. Arrested there, he was tried in Sydney, and cumulatively sentenced (1864) to imprisonment for thirty-two years. Morbid sympathy was displayed in his favour. In 1874 the question as to prerogative was decided, and the convict was pardoned, conditionally on leaving the colony. There was an excrescence which aggravated the transaction, but which does not require full exposition. The Governor, without authority, made use of a private conversation with the Chief Justice, Sir J. Martin, and the latter vehemently condemned the abuse of a distorted conversation.

The subject had been mooted in the Assembly. On the 11th June a motion disapproving the release of the convict was only rejected by the Speaker's casting vote. On the 23rd the Governor, deeming himself pledged to the release, put his reasons before the Executive Council. A minute was laid before the Assembly on the 25th June, the last day of the session. When the House was again convened (3rd Nov.) censure was again averted by the casting vote of the Speaker. Mr. Parkes obtained a dissolution in the same month.

When the new Parliament met (27th Jan. 1875), Mr. Robertson persuaded the Assembly to record its regret

that the ministry had advised the communication of the Governor's minute to the House. It was "indefensible in certain of its allegations;" if "an answer to the respectful and earnest petitions of the people, (it was) highly undesirable to convert the records of the House into a means of conveying censure or reproof to (the) constituents; and if it refer to discussions in the Chamber, then it is in spirit and effect a breach of the constitutional privileges of Parliament." The new House gave Mr. Robertson a majority of four, and the ministry resigned.

The Governor was aggrieved at the imputation that his minute was "indefensible." The House had not ordered the presentation of the Address in the usual manner, and the Speaker presented it. Sir Hercules, while without responsible advisers, sent a message by an aide-de-camp (2nd Feb.). Ultimately responsible for exercise of the prerogative of mercy, he claimed unreserved freedom in communicating with the Executive Council, and in that regard his minute was "entirely justifiable." Sir W. Manning, a member of the Upper House, failed to form a ministry, and recommended the Governor to send for Mr. Robertson. In doing so Sir Hercules explained that while prepared to change the ministry in compliance with the wish of the Assembly, he had felt bound to protest (in his message) against "an encroachment on the prerogative of the Crown."

Robertson formed a ministry. Parkes wrote in the following year that "no men ever strove more laboriously or hesitated less" in grasping at office than Robertson and his friends. Lord Carnarvon approved of the Governor's conduct, including the minute promulgated when he was without responsible advisers. Mr. Robertson worked harmoniously with a Governor against whom the resolution condemning the advice of Parkes had not been aimed with personal disrespect. The convict, who could boast of having caused the downfall of a ministry, transferred his roguery or his repentance to California. Sir Hercules became Governor of New Zealand in March 1879. On the eve of leaving New Zealand he commended the school system of New South Wales in preference to that of New Zealand. The former did not encroach upon the right of

parents to confer religious education upon their children, and Sir Hercules saw no prospect of real happiness for a community in which religion was neglected, much less in one in which it was discouraged. New Zealand did not demand payment of fees by parents. New South Wales did. Sir Hercules warned the New Zealanders that their legislation "not merely sacrificed a considerable amount of much-needed revenue, but its inevitable tendency is, I believe, to deaden parental responsibility, to encourage irregular attendance, and to weaken the feeling of self-reliance by teaching people to look to the State for everything." He reminded them that in New South Wales the "fees amounted to about £1 for every child in average daily attendance, and contributed nearly 25 per cent. towards the total ordinary expenditure." Those who desired that a Governor should be mere clay in the hands of a ministry were aghast at the Governor's speech. Wiser men rejoiced that his courage enabled the colonists to derive benefit from his sagacity; and all knew that he gave loyal support to his advisers for the time being, whatever might be his opinion as to their policy.

The annexation of the Fiji Islands to the Empire was accomplished by him. Islands in the Pacific had long been the scenes of unreined debauchery and ruffianism through the visits of roving ships. Individual offenders sometimes perished in affrays. More often, with help of European weapons, they asserted with high hand their lawless impunity. In Fiji in the beginning of the century a gang of convicts and others, using firearms in tribal wars, became so abandoned in villainy that the very savages were ashamed. Missionaries plied their sacred task after a time, and not without success. The followers of Wesley saw the Fijians turn from cannibal orgies to Christian worship. Roman Catholic missionaries were also active. Trade spread around like circles in the water. At Fiji, English subjects were congregated, and settlement ensued. The so-called labour trade—the lawless kidnapping of islanders—sprang up to meet the wants of cotton-growers, who, during the Secession rebellion in America and the decay of cotton culture there, hoped to find profitable market for their Fiji crops. To Queensland also the islanders

were carried. Few colonists were accomplices in the most brutal incidents of the trade, but many were careless how the slaves, whom they called servants, were acquired.

Usually boats were invited to a cruiser, and the natives were inveigled on board, or in default of other mode of capture, their canoes were sunk, and the swimmers were taken on board by force. The Queensland Government passed laws (Polynesian Labourers Acts) intended to regulate the traffic. But at Queensland there was British government. At Fiji there was none at all. A vessel could, if her master feared investigation at Brisbane, shape her course to Fiji or elsewhere. When a massacre of more than usual atrocity occurred on board, the dead and wounded were cast into the sea, a little water or whitewashing seemed to clear the crew of the deed, and the surviving prisoners were disposed of.

One vessel, the *Daphne*, was tried before the Vice-Admiralty Court in Sydney, but not condemned. There was said to be a difficulty in defining a slave "within the meaning of the statutes."

In 1859 a chief, Thakombau, called king (the Regulus of the Romans), weary of the struggle to maintain authority amongst his people and mongrel immigrants, offered the sovereignty of the Fiji Islands to the Queen, on conditions. The Government sent Colonel Smythe, R.A., to inquire, and the Duke of Newcastle declined Thakombau's offer. In 1871 a kidnapper was convicted and imprisoned in Queensland. In 1871 the heroic bishop, John Coleridge Patteson, was slaughtered at Nukapu. A kidnapper on one occasion put on the garb of a bishop to entice islanders to his vessel, slew some, captured others, and enraged their friends on shore. Five islanders were kidnapped at Nukapu and taken to Fiji; and it was believed that in revenge for their loss the Bishop was murdered, and five marks of revenge were placed upon his body. The martyr to his countrymen's crimes roused by his death his country's conscience.

The Earl of Kimberley deputed Commodore Goodenough to report (with the English Consul in Fiji) on the existing confusion. Again the sovereignty was proffered to England (21st March 1874), and again declined.

Sir Hercules Robinson was empowered to negotiate at the islands, and (10th Oct. 1874) a deed of cession was executed. A charter was issued for the government of the islands as a Crown colony. Sir Arthur Gordon was selected as Governor, and the charter was proclaimed (Sept. 1875). Sir Arthur Gordon (1877) was appointed High Commissioner in and over the Western Pacific. His determination to govern the native race fairly, and fit them for existence in the circumstances with which Western customs had surrounded them, was no sooner known than denounced. His sagacity in obtaining the required contribution from the natives through the agency of native institutions and customs was assailed with arguments of which events speedily proved the futility. His Ordinance was passed in February 1876. The previous system yielded £3500 in 1875 ; the new, during a part of 1876, yielded £9300 ; and in 1877 more than £15,000. The Secretary of State declined to interfere with Sir Arthur Gordon's measures.

Whether the experiment thus tried in 1876 will yield permanent results depends upon Sir A. Gordon's successors for more than one generation. He was transferred to New Zealand on the departure of Sir H. Robinson in 1880.

The trade in "labour" was largely carried on at Queensland, and the Colonial Secretary of that colony (Mr. Palmer) moved (at the International Conference in 1881) that more effectual means were required to punish the islanders. Yet at the date of the Conference it was notorious that a French vessel (*Aurora*) had plied her trade by staving in canoes, and ruthlessly capturing their owners. Vessels were licensed for the trade by Governors of the Australian colonies. Thirty-three were licensed in Queensland in 1876. Nearly 18,000 islanders were deported to Queensland before 1881, and many were, in accordance with their contract, carried homewards at its close, but "unless landed not only on his own island but at his own village, the islander is sure to be consigned to slavery if not death, as well as to the forfeiture of his hard-earned store of trade in return for his three years of labour and expatriation." Enough has been said to draw attention to the problem which Sir Hercules Robinson took the first step to solve when he acquired at Fiji a fulcrum by means of which the

British Government might strive to bring its own outlaws under subjection; and, if possible, co-operate with other powers willing to do likewise. At Sydney Sir Hercules was succeeded in 1879 by Lord Augustus Loftus, who, after a diplomatic career in European Courts, turned to the task of governing a colony. Subsequent Governors in New South Wales have fallen on comparatively uneventful times. Lord Carrington, who succeeded Lord A. Loftus in 1885, was followed by Lord Jersey for a brief period. When Lord Jersey resigned he was succeeded (1893) by Sir R. W. Duff, on whose death in 1895 Viscount Hampden became Governor.

The manner in which the question of transportation was swept from the arena of discussion during the government of Sir J. Young in New South Wales deserves notice. Every Australian colony except Western Australia protested with equal vigour against the continuance of transportation; but Mr. McCulloch (in Victoria) proposed a method of coercion, which, through the misery of the weak, might appeal to the pitifulness of the strong.

In 1863 the Victorian Assembly had, on the motion of Mr. O'Shanassy, adopted an address to the Queen, protesting against the revival or continuance of transportation to any part of the Australian continent or adjoining settlements. The Duke of Newcastle, while courteously acknowledging the address, did not promise immediate redress. Early in 1864 Mr. McCulloch complained that the disregard by the Imperial Government of the remonstrances of the colonists tended to weaken their attachment to Great Britain. Adherence to the course indicated by the Secretary of State would be "universally regarded as an act of oppression and injustice." He denied that the "willingness of the people of Western Australia to receive the off-scouring of British society" was a justification for sending convicts thither, and carried in the Assembly (1864) resolutions protesting against the continuance of transportation to Western Australia, and denying the right of the Western Australians to calculate upon it. Dispensing with the usage which required such correspondence to be conducted under the sanction of the Governor, McCulloch, by circular letters to New South Wales, South Australia, Queensland,

Tasmania, and New Zealand (Aug. 1864), invited co-operation in refusing to hold any intercourse with Western Australia. Royal mail steamers ought to be prohibited from calling at any of her ports. The time "had arrived for the exercise of such a power of self-government." New South Wales declined to take a step which "would amount to an undue interference with the Imperial functions." South Australia was willing to co-operate. Queensland doubted the expediency and the need for the course proposed. New Zealand, sympathizing with the main object, could "not coincide in the expediency of interfering for that purpose with the postal arrangements between England and Australia." Tasmania required "ample time" to consider the method proposed. She would send representatives to a conference. In November 1864 Mr. Cardwell wrote to Sir C. Darling. The Government had been guided to their decision by an anxious desire to consult the interests and wishes of Her Majesty's Australian subjects. "While on the one hand it has needed no menace of opposition to induce them carefully to consider the representations of the Eastern colonies, so on the other the inopportune arrival of that menace has not prevented their taking the decision which on other grounds has appeared to them to be on the whole expedient." Mr. Cardwell was "glad that the irregular course of proceeding adopted by the government of Victoria had received no encouragement" in Sydney, where there was no attempt to interfere unduly with Imperial functions. Despatches from Sydney and Melbourne had arrived while Her Majesty's Government were considering the whole question. It had been decided to terminate transportation within a limited period—three years. The immediate occasion of the decision was the necessity to issue regulations for the disposal of Crown lands in newly-explored districts in the northern districts of Western Australia, but a "just consideration for the interests, the feelings, and the deep conviction of the Australian communities in general, weighed most materially in bringing Her Majesty's Government to this conclusion."

The first to encounter the risk of a decline in the standard of morality by means of association with freed criminals; the first to repel such association by inherent

sense of right, although compelled by two Governors to resist attempts to drown that sense; long doomed to undergo the unfounded imputation that her society had not successfully resisted those attempts; and making common cause in the last effort to shake off all evils connected with transportation, the old colony was, when the final fiat went forth and transportation died, justified by her public men in receiving commendation for the constitutional manner in which they had laboured to destroy it. Mr. Cardwell's promise was faithfully kept. In 1867 the last ship with convicts was despatched to Western Australia.

CHAPTER XX.

JUDICIAL AND JURY SYSTEMS.

The judicial and jury systems of the colonies may be considered together. The long struggle with regard to juries in New South Wales, and Chief Justice Forbes' abortive attempt to introduce them while they were not authorized by law, must be borne in mind. South Australia, priding herself upon distinctness of origin, for a brief space clung to the time-honoured grand jury of England. In Queensland and in Tasmania a grand jury never existed. In 1874 New Zealand alone possessed it, but in that year the influence of one of the judges (T. H. Fellows) caused the introduction, in a Judicature Act of Victoria, of a permissive clause by virtue of which it was made lawful for a judge of the Supreme Court to summon a grand jury under certain circumstances. But to make the jury of presentment only an exceptional remedy instead of an inflexible rule was not to introduce the law of England. The discretion of the judge was not a safeguard like the Great Charter. It may seem strange to Englishmen that their brethren in colonies have abandoned one of the great muniments of their liberties. In the United States of America our kindred were wiser. The great American jurist, Story, commends all men to read Blackstone's eulogium on the strong and twofold barrier of a presentment and a trial by jury to guard and keep sacred for all time the liberties of the people. The founders of the American Constitution enshrined within it the palladium of English freedom. The loss of their birthright by Australians may be attributed in

the first instance to the inevitable conditions of a penal settlement, but afterwards to the mean motives furnished by the convenience of employing functionaries to control indictments without regard for those securities against tyranny or vindictiveness which Judge Story declared to be as necessary in a democracy as under a king. Although the colonial governments were prone to devices by which they might control the administration of justice, there was a laudable desire to maintain the purity and independence of the judges. Able men were in the early days appointed by the British government, and a high tone prevailed upon the Bench. Wentworth demanded that their position should be secured by a provision on Her Majesty's Civil List in the colony, and by tenure of office during good behaviour, and not at pleasure. The example of the older colony accrued to the advantage of the others. Fortunately, the high standard maintained upon the Bench in the early days was afterwards aimed at. Conspicuously, Mr. Parkes in Sydney selected the fittest man for the post of Chief Justice, when, with a certainty of giving umbrage to a follower, he appointed Sir James Martin.

The existence of an appeal to the Privy Council was also of inestimable value, not merely as a check upon crude decisions, but as a guarantee that the calm light of reason and law would be thrown upon intricate cases of which local prejudice might obstruct the solution. The Areopagus of the Empire, while doing justice in individual appeals, afforded guidance to other colonies as well as to those appealing, and contributed to maintain a standard of uniformity. This tendency was increased by a custom of adopting changes in the law when made in England. But beneath the arena of the Supreme Court the exigencies of a young community, and a craving for departmental control, banished reverence for the safeguards of English liberty. It would have been impossible to establish grand juries in the primitive condition of New South Wales. Their factitious existence in 1825, and their speedy annihilation, left scarcely a trace behind. The apparent convenience of investing a government officer with the functions of a grand jury blinded most persons to a vicious principle. Yet now and then a voice was raised. Chief Justice Sir J. Dowling

declared in 1838 that New South Wales was, in his opinion, fitted for the

"institution of the grand and petty jury. . . . Nothing but a well-grounded apprehension that in the infancy of the colony justice would not be properly administered by such a system, would warrant the substitution of the Attorney-General in place of a grand jury, and arm him with the enormous discretion of determining on his own personal responsibility in what cases he should or should not put the law in motion. Such a measure, so repugnant to the principles of the British Constitution, could only have reference to a society of outcasts. . . . Experience dictates the policy and the necessity of casting upon society the largest possible share in the administration of those laws by which it is to be governed."

Nothing followed this protest, and between 1856 and 1880 nineteen responsible ministries ruled in the colony, and still the jury of presentment was denied to the Queen's subjects, not by the Crown, but by their own representatives. Victoria (except to the permissive extent just mentioned) and Queensland, offshoots of New South Wales, were also content with the substitution of a departmental functionary for a grand jury of their countrymen. Tasmania and Western Australia were in like condition. South Australia, attracted by the license to which prosecution by an Attorney-General gave scope, discarded her early Ordinance of 1837, which declared that "no person shall be put on trial on any indictment . . . unless the bill shall first have been presented by a grand jury, and shall have been returned by them a true bill." It was under the rule of Sir G. Grey that the first blow was aimed at grand juries. It was enacted (1842) "that in order to dispense with the attendance of the grand jury, and otherwise to expedite the business of sessions of the peace, all criminal proceedings before any such Court of General Sessions shall be by information in the name of Her Majesty's Advocate-General." Lord Stanley disallowed the Ordinance. But the local authorities persevered. In 1843 they pushed aside, without abolishing, grand juries, by an Ordinance (No. 12, 6 and 7 Vict. 1843) which ordered that "no person should be put upon trial . . . unless the bill . . . . shall first have been presented to a grand jury on the prosecution of Her Majesty's (Attorney or Advocate-General), and shall have been returned by them a true bill, reserving always nevertheless to (Her Majesty's Attorney or Advocate-General) the right of filing informations *ex officio*, and to

the Supreme Court the right of permitting informations to be filed." This Ordinance was allowed; and, the path being smoothed, the work was consummated in 1852 by another (when Sir H. F. Young was Governor and Mr. R. D. Hanson the principal law officer), which declared that "from and after the passing of this Act, no person shall be summoned or liable to serve upon any grand jury,"—repealed the section of the Ordinance of 1843 above cited; and made presentment "in the name and by the authority of" a prosecuting officer sufficient when the lives of Her Majesty's subjects were imperilled. Let the reader reflect on the substitute provided in the colonies for the birthright of Englishmen. The Attorney-General of a colony may have been called to the Bar the day before his adoption by a ministry. He may know little law and no morality. He may be seditious. If he have ability it may be noxious. There was nothing to prevent Charles G. Duffy from becoming Attorney-General except the fear of so vain a man lest professional incompetence should expose him to shame. By his word and at the public cost the life of any man might have been put in peril. To an English reader such a prospect might seem beyond the range of possibility. Nevertheless, the grand jury of Victoria in 1880 consisted of a personage who was a colleague of McCulloch, Verdon, and Francis in 1866, and of Messrs. Duffy and Berry in 1871. To him was committed the conscience of the community. He wielded the arm of the law. As Attorney-General he set it in motion; and claims advanced by his predecessors put it within conception that he might pronounce its sentences from the Bench.[1]

The extinction of grand juries was not the only loss to society in consequence of transferring to departments functions proper for society. Sir R. Bourke commended the value of an independent magistracy, not only as administering justice without cost to the State, but as supplying social help and good counsel to neighbours and strengthening the wholesome ties which bind a community together. In all rural districts unpaid magistrates sufficed.

[1] Admiration of Sir J. Thurston is mingled with some shame for Australian statesmen when we find (Sir H. Wrixon's "Socialism," &c., p. 36) that Sir John established grand juries among the Fiji natives.

It was inevitable that in the heart of a large population a paid magistrate should be required, because numerous processes occupied his whole time. But elsewhere duties of petty sessions were performed by an independent magistracy. Governors appointed, as a rule, fit persons, and they commanded respect and esteem. The same craving for departmental authority, which was fatal to grand juries, undermined the worth of the unpaid magistracy. A well-filled Treasury enabled a government to appoint numerous stipendiary magistrates as servitors of a department, and the independent magistracy was almost functionless, except in a few districts. The example set in one colony was followed in others. A singular debasement of the magisterial body ensued. As stipendiary magistrates were multiplied, responsible ministries thought it unimportant whether unpaid magistrates were competent or incompetent. It was deemed that a magistrate had nothing to do, and ministries appointed men capable of doing nothing. So customary did the prostitution of patronage become that more amusement than shame was excited when a man unable to read and write was added to the magisterial roll in Victoria by Messrs. O'Shanassy, Duffy, and Ireland. But evil appointments were not confined to that colony. The more unfit a man might be, the more covetous he was to retain his distinction, and more than one ministry has given offence by proposing to purge a magisterial roll.[2]

It is difficult to forecast the future under such conditions. It may be hoped, though it would be bold to expect, that when a few generations shall have been reared upon the soil in habits of industry, the malign influences of former days may be modified. But it is easier to destroy than to restore the foundations laid by the wisdom of our forefathers.

The way in which patronage was dispensed by a ministry of which Mr. O'Shanassy was the head in 1859 may be estimated from the fact that in two months more than 134 territorial magistrates were appointed, at the period of a

[2] An inquiry in Victoria in 1896 was followed by the removal from the magisterial roll of several magistrates found to have been corrupt. Mr. G. Turner was the Prime Minister who thus purged the magisterial roll.

general election in 1859. The Legislative Assembly, apprehensive of the manner in which such a government would endeavour to influence elections, resolved that every officer under ministerial control should be required under pain of dismissal to abstain from taking any part in elections for members of Parliament. The resolution, moved by Mr. W. Nicholson, averred that interference had become so common as to require repression. Mr. O'Shanassy made a merit of necessity, and accepted the resolution, which was carried without a division.

When ministries had established their ascendancy as to appointments summary dealing with civil servants was sometimes resorted to. One able officer, Mr. Selwyn, was suddenly dispensed with in 1868 by the McCulloch ministry, although Sir Roderick Murchison had paid high tribute to his talents. It had been believed by European writers that gold veins diminished in richness as they descended. Mr. Selwyn doubted the invariability of such a rule. This "skilful observer" (Sir R. Murchison wrote) "infers that the quartz veins of the Silurian rocks of Victoria are older than the granites (and that), although no very reliable evidence exists of their increasing downwards very greatly in richness, neither is there any evidence whatever in Victoria which would enable us to state that any vein rich at the surface will die out, or suddenly become unprofitable." Sir R. Murchison, while qualifying his views in a new edition of his "Siluria" (1859) said:

"In bowing to the reasonings of a sound geologist who has so carefully explored our most auriferous colony, and in necessarily modifying my former suggestions respecting the profitless nature of gold-mining in the solid rocks of Victoria, I still adhere to the belief that, in general, gold veins diminish in value as they descend; (but) in modifying a portion of my views, I readily admit that inasmuch as the broken or drift gold of Victoria exceeded anything of which we have a record in history, so it is a fair inference that the quartz reefs in the solid rock of the same colony, from the higher parts of which the richest drifted materials were derived, may prove much more remunerative than those of other countries."

In spite of this testimony to the worth of the "sound geologist" of Victoria, he was informed that his services would not be required at the end of the month.[3]

[3] By a coincidence, unforeseen by Mr. Selwyn and by his removers, an offer of the control of the Geological Survey in Canada was on the sea at the time, and he accepted it.

The Martin ministry, which passed the Public Schools Act in 1866, extended the municipal system of New South Wales. More than thirty municipalities had been formed under a permissive Act of 1858 passed by a Cowper ministry, but a check had been sustained. In 1881 many dotted the interior and circled the principal towns already boasting their mayors and civic state; but the extension of municipal government was halting in New South Wales when compared with Victoria and Queensland.

The senior corporation—that of Sydney—was unfortunate, and had the reputation of being ill-managed. Abolished in 1853, and supplanted by three commissioners, it was re-established in 1857, but did not maintain respect or prove its sufficiency. More than once the government advanced money to rescue it from debt. Once (1875) its estate was sequestrated by order of a Commissioner of Insolvency. But there is a soul of goodness in principles of local government which contends against dissolution. They survived the tyranny of Norman sovereigns, and the corruption of later days. They were reluctantly adopted by the colonists when Sir G. Gipps strove to graft them upon a community long accustomed to obtain from the public Treasury, and not from local rates, the means for local improvements. But he could not induce the rural districts to adopt them. In Victoria, with large aid from the public funds, municipal government spread so widely that in 1892 it was said that all but about one per cent. of the area of the colony was included within urban or rural municipalities. Authentic statistics respecting all the colonies will be found in the Appendix to this volume.

When the contingent of Imperial troops were removed from Australia,[4] the volunteer organization of New South Wales was greatly strengthened; and while in office, as well as afterwards, Sir James Martin was conspicuous in its support. An outer and an inner line of defence soon protected the metropolis nestled on the

[4] Mr. Parkes in 1859 moved resolutions condemning the retention of Imperial troops and advocating local arming. Mr. W. Forster carried by 39 votes against 11 an amendment affirming that the regular troops ought to be supplemented by a national militia.

numerous promontories which jut into the picturesque harbour, and more than 2000 volunteers were enrolled.

Throughout the Australasian group attention was drawn to the means of defence. In every colony public men uttered warning notes. The Imperial Government was moved to assist with advice, and contributed towards furnishing vessels of war. Sir William F. D. Jervois was deputed by the Earl of Carnarvon to examine the capabilities for defence in Australia, and his word was received as of authority. Reports on such subjects are fortunately confidential, and it is sufficient to say that patriotic colonists were grateful to the government which sent so able a Commissioner to advise the local authorities. At a later date a Royal Commission, of which the Earl of Carnarvon was chairman, sat in London[5] for three years, and received evidence from all parts of the Empire on the defence of British possessions and commerce. The subject has been spasmodically dealt with in the Australian colonies. The accumulated wealth in each metropolis was felt to be a temptation for marauders in time of war, and to deserve some safeguards always. Large sums were expended in fortifications at Melbourne and Sydney, but changing conditions of military science require frequent attention and involve expense. The Imperial Government were willing also to leave Imperial troops, which the colonies were ready to pay for; but through local misunderstanding they were removed, as previously described. Public opinion hardly concurred with the result, and urged the local governments to adopt measures of defence. It was difficult to ensure concert between the colonies. The Federal Government which Wentworth aimed at in his early draft of the Constitution of New South Wales, though languidly approved in public, had not been wrought out. No acceptable scheme had been propounded by responsible advisers in any colony. The truth of the maxim—*divide et impera*—was shown in the condition of the colonies, although not by the will of the Imperial Government, but in compliance with their own cravings, several of them were divided. Sundered for

[5] The other members were Lord Camperdown, Sir H. Holland, Sir A. Milne, Sir L. Simmons, Sir Henry Barkly, Mr. Whitbread, Mr. Hamilton, Mr. Childers, and Sir T. (now Lord) Brassey.

selfish purposes, they had discovered no means of combining for purposes common to all. It is almost pathetical to observe the efforts made to remedy their disjointed condition. There was no want of loyalty among them. When Dr. Lang formally proposed that New South Wales should sever the ties which bound her to the Empire, public opinion sympathized with the member of the Legislature who thought that the proposition should be "thrown on the floor and swept out by the common hangman." When Mr. C. G. Duffy more insidiously recommended that the colonies should be declared free from all connection with the Empire in time of war, he found no support. There was no defect of courage or of loyalty amongst the people. They are proud of their heritage in the past of their common country. The great names of its heroes, sages, and poets are theirs as fully and endearingly as they belong to the dwellers in England. But as regards measures to bind together what all wish to see united, no mode of life has yet been found. Common sense and constitutional custom alike forbid the Imperial Government to resume control of questions demitted to the separate colonies. It would almost seem that only the demon of actual war will rouse sufficient consciousness of danger to compel union for defence. Writers in the press discuss the subject, and papers upon it are read at meetings in various parts of the Empire. Almost all agree that something should be done, but none have succeeded in convincing others what it should be. That the taxpayers of the United Kingdom should defray the cost of defending wealthy and populous self-governing colonies can hardly be suggested. That voluntary enthusiasm, unregulated by law and unaided by local taxation in the colonies, can suffice to ward off a well-planned attack cannot be seriously maintained. It is true that loyal sentiments abound, and that without them no defences can be relied upon; but it is not true that now, as in the days when men fought hand to hand, rich towns can be guarded against scientific attack. It is the old fable of the bundle of sticks. Until the local legislatures assent to taxation levied for common purposes of defence, they must live in danger from any marauder who can undertake a costly expedition against them. They have not been

altogether idle. Wentworth's impassioned allusion (in 1853) to the "pouring out of Australian chivalry to seek glory and distinction in foreign climes,"[6] was sneered at by some as Utopian. In 1885 it was wreaked into fact in a manner which evoked enthusiasm in New South Wales and admiration in England.

When faith was broken with General Gordon in 1884, and his death ensued, an offer of troops from New South Wales was accepted with gratification by the Government, favourably commented on by the press, and became the topic of admiring conversation in town and country. Heart beat in unison with heart as the electric telegraph girdled the globe. One public man in New South Wales, not in office at the time, was smitten with envy at the result. Parkes denounced the folly of fostering a "spurious spirit of military ardour in a country like ours."[7]

History can deal with few details respecting railways. The map shows the cordillera which frowns upon the east coast of New South Wales. Unsurmounted by any colonist until Blaxland, Lawson, and Wentworth threaded their way over the Blue Mountains in 1813, the barrier was difficult to overcome. At the foot of many steep hills might be seen masses of large limbs of trees which had been slung behind descending drays to check their descent. The rough roads were traversed by toiling oxen dragging laden pole-drays. In dry seasons carcases of the patient beasts, out-worn to death, tainted the air. There had been speculations about railroads, but the cost was supposed to forbid them. The revenues were insufficient. Gold had not then been found in the soil, nor had loans been raised in London. Yet it seemed probable that a railway over a mountain

[6] *Vide supra*, pp. 21, 22.

[7] In 1891-1892 the local forces in Australia and Tasmania exceeded twenty thousand, exclusive of Naval Volunteer Artillery, nearly 2000 in number. The Imperial fleet on the Australian Station at the same time consisted of the s.s. *Orlando* (5600 tons) and seven other vessels, while the Australian Auxiliary Squadron (formed after a conference in London, 1887, instigated by W. E. Forster's Federation League) contained five cruisers and two gun-boats. Victoria, Queensland, and the other colonies, though in a less degree, had vessels for harbour defence. Irrespectively of many sums expended from time to time from general revenues, the debts incurred for defence purposes were, in 1892:—In New South Wales, £1,018,679; Victoria, £100,000; Queensland, £191,423; South Australia, £234,414; Tasmania, £118,993.—Coghlan's "Seven Colonies," &c., 1893, p. 119.

track, when once made, would be less costly in the end than the making and repairing of the crumbling roads which sustained a traffic, dilatory always, and often marred by disaster. Credit in London followed increase of population and wealth in the colony; and by credit it was determined that the mountains should be overcome. If by good husbandry all loans had been met from Crown land revenues all might have been well. By degrees the mountain barriers were conquered, and the interior was within command. The victory was won when the iron horse rushed over the forests and the plains watered by tributaries of the Murray and the Darling. In the other colonies there was similar activity.

A large district embracing much level land between the Murray and Darling Rivers acquired the name of Riverina. Melbourne was the nearest port. Its wool was shipped thence, and from Melbourne it derived supplies. A few talked of separation, and at one time it was proposed to obtain special establishments for the "Riverina Province." But the powers reserved for severance of territory from New South Wales were limited to the Northern boundary. The consent of New South Wales was essential to permit the severance of Riverina; and, if it could be procured, the new province would be an inland territory. For Customs revenue it would be at the mercy of its neighbours. Contraband trade would run riot over a boundary encircling a vast territory inhabited by 22,000 persons sparsely distributed. Alliance with any other colony would leave the district in the same relative difficulty as that against which it protested in 1864. Riverina remained a part of New South Wales. Public works were carried on in the district, and the extension of Circuit Courts abated the grievance of residents who had formerly travelled far to obtain justice.

Public men in Victoria, who had obtained separation when their numbers were so small that the boundary accorded was cramping, were dismayed as they saw Riverina bound by stronger commercial ties to New South Wales. Wealth was driven to Riverina and Queensland by the hostility which Victorian ministries displayed against graziers, who, ostracized by local legislation, were

driven to new pastures, and enriched other colonies by their enterprise. Nevertheless Victoria carried her railways to two points, Albury and Echuca, abutting on Riverina; and though the government could proceed no further, private enterprise availed itself of natural advantages in connecting Riverina with Melbourne. The bonds which connect the two colonies are natural; their political separation checks healthy circulation on both sides of the artificial boundary.

Two circumstances conduced to the rapidity with which flocks and herds were spread and tended on the wild lands of the interior. Throughout long years the forests of the Eastern slopes to the Pacific, and the hilly nature of the country, compelled the colonists to keep their sheep in small flocks. One man shepherded throughout the day a flock of three or four hundred sheep, and folded them in hurdle-pens at the station, where a watchman slept in a watch-box near the hurdles at night, and by day kept house in the hut which was the common home. The hurdles were continually moved from place to place to ensure cleanliness; and with the help of the two or three shepherds the watch-box was moved also. The size of flocks was regulated by the nature of the country or the area at the command of the grazier. When the plains beyond the sea-coast water-shed were reached, larger flocks were at once formed. A shepherd could more easily observe his charge there, though two thousand in number, than amongst the forest ridges of the settled districts. But still the flocks were folded at night in hurdles, or in a well-fenced permanent enclosure kept clean. The native dog made it necessary to secure them. It was not a wastrel, straggling behind, that contented him. If, as sometimes happened, a shepherd lost his flock, the wild dog would rush upon them, and not content with worrying one, would inflict mortal wounds upon many, returning at night to his prey. Then master, overseer, and all available servants went abroad to search for the lost sheep, and the keen sight of a native was inestimable in seeing them afar. Traps of various kinds were used to destroy the dogs, and many a transported poacher applied his art to save the property of the Australian master to whom he had been assigned. But the

palliatives were local, and the dog mastered the situation. As the sheep were daily driven to and from their feeding-ground the grass for some distance from the shepherd's hut was so consumed and trodden down, that on the worn space it seemed sometimes that there never had been or would be pasture there. The daily trampling of the flocks on their way to the distant grass defeated the efforts of nature to repair the ruin. The man who first proved the gain which would accrue from dispensing with the morning and evening march of the flocks was an ex-convict shepherd in the genial climate of Liverpool Plains. His master was a shrewd settler on the Hunter River. The man offered to tend 2000 sheep if his master would increase his wages considerably, and allow him to obtain his food at any of the stations at which he might call for them. He required no hut and no aid from a watchman at night. He would cook his own food, as other travellers did when they paused on a journey. The master agreed. The man wandered with his lazy and contented flock to rich pastures within the run for which his master paid a license-fee, but which were out of reach from any fixed station. The flock grew fatter and lazier; the wool was improved in quantity, and to a certain extent in quality, inasmuch as the sheep escaped hardships which sometimes injure the growth of the fleece.

But the successful skill of one man could not be imitated throughout the territory. His well-trained collies and his own peculiarities enabled him to defy the native dogs; but there seemed always a risk that the fine flock might at some time be decimated. Gradually the truth dawned upon graziers that the wild dog might be destroyed by poison. When gold was found, and shepherds abandoned the crook for the pick-axe, it became impossible to tend sheep in the accustomed manner. As the prospect of gain at the goldfields became a rough measure of the rate of wages in all occupations, the increased expenditure would have been such that, even if he could have found shepherds, the grazier would have been unable to pay them. Out of the nettle danger he plucked the flower safety. Shepherds could only be dispensed with if the runs were fenced. Irretrievable confusion would have ensued (even if there had been no wild dogs) by letting flocks roam at large. Not

attached to any spot by affection they would have wandered without restraint, and have been inextricably mixed with those belonging to distant neighbours. The cost of fencing was a severe tax, but the cost of overseeing sheep within enclosures of great size wherein they might roam at will, feed at pleasure, and rest or sleep at pleasure, would be diminished incalculably. They would also thrive better. Dogs were destroyed throughout the land by distributing poisoned baits. Baits were drawn across the runs to guide them to their destruction. Strychnine relieved the squatter of the enemies which neither traps nor the chase had exterminated. Runs were fenced in. Logs and boughs were cut down in the most convenient places, and laid along the boundaries to form "brush fences." Boundary-riders were employed to visit them, and repair any gaps caused by subsidence, accident, or wilfulness. The rough fences in time gave way to wire fences, and where timber could not be procured wire was used in the first instance. Dividing fences were added as soon as possible, to separate certain sheep. The pastoral advantages of the land were enhanced. What necessity had enforced proved economical in the end. The new method of sheep-management speedily became common throughout Australia, although the old custom lingered in certain districts longer than might have been expected, in face of the admitted fact that land judiciously fenced would maintain twice as many sheep as could be kept upon it in flocks followed by shepherds.

The question of the sale and occupation of the waste lands so freely handed to the colonists was dealt with by Mr. J. Robertson, who, when first elected in 1856, advocated "free selection" over all Public Lands. On the introduction of a Land Bill he endeavoured to insert a clause providing for this disastrous principle over all land, "surveyed or unsurveyed." At a later date he appealed to the people in favour of "free selection before survey," and introduced his Land Bill, which was made the bone of contention between the two Houses in 1861. After the reconstruction of the Upper House he carried two measures "for regulating the alienation of Crown lands," and for "regulating the occupation of Crown lands," with which his name was identified. But popular as he made the

demand for "free selection before survey," it poisoned the springs of government, defrauded the revenue, demoralized the people, and scattered them in places remote from good, and subject to the worst, influences.

All the evils which Gibbon Wakefield had predicted as to the disposal of land indiscriminately at an insufficient price afflicted New South Wales with a force modified only by the inexorable past, in which the bulk of the desirable soil within many days' journey from the coast had been alienated before Robertson's measures were enacted. Men selected land at the low rate prescribed, not in order to cultivate it, but with a view to sell it. By mutual fraud some graziers selected vicariously, kept up the payments made in the name of their agents, known in common speech as "dummies," and obtained transfers when titles had accrued. The process was so notorious that no government could plead ignorance of its existence, and complicity was imputed where knowledge was undoubted. The opponents of the Acts warned their promoters, from the first, of the evils they would engender. The Act permitted any "person" to select. Names of children, some only a few months old, were used. Relatives, real or fictitious, were availed of. Thus thousands of acres were amassed in one hand under an Act of which the purview limited the selection by one person to 320 acres. Residence was required, and improvement at the rate of £1 an acre. Movable or worthless huts, in which a man, scrupulous to seem truthful, could remain a few hours to justify his claim of residence, were used to imply occupation, as "dummies" were put forward for deception as to "person." The opponents of the measure pointed out the fatal facilities afforded to fraud, but reason, if not silenced, was overborne. Yet, when 100,000 selections had been completed, it was found that only a fraction of them had residents on them. The State had lost the difference between its minimum price and that which the speculator, fraudulent or honest, had been willing to pay to the outgoing selector, who often proceeded to re-enact a similar deception elsewhere.

Under the Alienation Act "one person" might select from 40 to 320 acres of any Crown lands (excepting town,

suburban, reserved, &c.) at a price of £1 an acre, and pay one-fourth of the value as deposit on application, having three years in which he might pay the balance without interest. Certain lands might be reserved by the government, but practically the waste lands were submitted to selection without regard to intrinsic value or to situation.

Mr. Robertson, while sowing the bitter seed of indiscriminate selection, was actuated by no ill-feeling towards others; nor did he contemplate the demoralization which ensued. He divided the lands of the colony into three classes—first class, settled; second class, settled; and (the great bulk) unsettled districts as "all other Crown lands." In the second and third classes leases might be issued for terms of five years. He devised an elaborate scheme for appraising "the fair annual value of a run for pastoral purposes," exempting from computation the value of improvements effected by the claimant for a lease.

Briefly as the Acts may be described, they, and the regulations promulgated, were intricate. Their faults and the frauds committed under them were palpable, and Mr. Robertson himself in 1875, head of the eighth[8] ministry formed after the passing of the bills, was constrained to amend them. Personal selection was enforced; vicarious selection and illegal contracts were made misdemeanours; no one under sixteen years of age was allowed to select; forfeiture of conditionally-purchased (*i.e.*, selected) lands was exacted in certain cases; and other provisions were found necessary by the author of the Act of 1861. Stoppage of vicarious selection was not the only necessity. A portentous danger had become apparent. Until 1872 the selections had not comprised 360,000 acres in any year. In 1873 and 1874 they rose to 1,391,719 and 1,586,282 acres; and the estimated amounts due, or to fall due, upon them, in December 1874, were £4,349,598.[9]

Though the author of the Land Act had imbued it with baneful principles—had subjected to plunder the public estate which should have been administered with circumspection; had created an army of sturdy impostors, before

[8] He had been a member of five ministries.

[9] "Essay on New South Wales." G. H. Reid. Government Printing Office. Sydney: 1876.

whom the government might be found a feeble creditor; had facilitated the frauds by which, under the pretence of forming an industrious yeomanry, the State had indirectly alienated to graziers, for a fraction of its value, land which, prudently parted with, might have been sold for many millions sterling, and have paid for hundreds of miles of railway—he had an honest heart in his work, and joined in amending it. Invited frauds, and prompt demoralization; cupidity of selectors, sometimes sharpened by a sense of gratified revenge; cupidity of squatters, resorting to mean artifices of self-defence by immoral or illegal acts—these were taints which no amendments could wash away. There was yet another consequence which ensued more speedily than the worst forebodings had predicted. The reckless creation of legalized haunts removed from the observation of the police, from the advantages of schools, from the visits of pastors, and from the restraints of society—created homes for harbour of villainy. Any scoundrel anxious to live beyond the purview of the authorities could "select before survey" the most convenient and secluded nook for the perpetration of his own or his comrades' villainies. There was no check upon the multiplication or dispersion of such dens. They were scattered wheresoever they might best suit the purposes of thieves, and thwart the operations of the police. The mode of disposing of Crown land adopted by the Sydney Legislature at the dictation of Robertson, and imitated in the Victorian Parliament at the instigation of Duffy and others, led of necessity to desecrating with the names of homes the lairs of robbers and murderers. There was no law, no authority, to prevent the most hardened ruffian from choosing the place most suitable for his schemes, where he might, in his cheap and dirty castle, defy the police. They who remembered the days when Governor Darling's Bushranging Act was needed to repress the dangers which beset the colonists, who knew that when Governor Bourke desired to modify that Act the universal sense of the community compelled him to renew it in 1834; and remembered also that the Committee of Inquiry on Police reported in 1835 that the scattered occupants of Crown lands in remote districts "raised property by depredations, sold spirits, and contributed to debauchery," and

abetted "nefarious practices" in their homes, "screened from general observation" on nooks of Crown lands occupied without authority—were deemed old-fashioned when they predicted evil.

Sir R. Bourke had checked the original mischief by a measure (1836) to prevent unauthorized occupation of Crown lands. The military mounted police, aided by laws in restraint of bushranging and of unauthorized occupation of waste lands, had crushed the evils of former days. But the military cavalry were cashiered by the economical care of Charles Cowper. The Crown lands were under pastoral occupation, but the State could reclaim for sale the land leased to squatters, and if it obtained a just price it might reasonably hope that wholesome occupation by industrious yeomen would be the result. The State, if wise, would naturally sell lands in appropriate localities, so that the blessings of Christian life might go hand in hand with the government in providing for the welfare of well-doers. Thus was South Australia acting at the time.

Mr. Robertson's Land Act abnegated the function of government. It legalized that promiscuous occupancy which had been stamped out in 1836, and it put weapons of offence and defence in the hands of many daring scoundrels. The rapidity with which those weapons were used brought speedy retribution. Gangs of active young thieves, provided with aptly-selected lairs, and resorting to similar receiving houses, revelled in the newly-acquired facilities accorded by Mr. Robertson's attempt "to make better provision for the alienation of Crown lands."[10]

From 1862 to 1867 columns of newspapers were filled with narratives of robbery and murders. In five years more than forty lives of robbers and others were lost. The disgraced governments of the day were incapable of finding a remedy, until Mr. Martin cut the Gordian knot by an Outlawry Act so incisive that, in a brief space, temptation to informers and immunities of the police relieved the colony from expenditure and shame.[11]

[10] Preamble to the Act, 25 Vict. No. I. 18th October, 1861.

[11] In Victoria similar evils prevailed for some time in a mountainous district, where four rascals caused an expenditure of £50,000 before their gang was exterminated.

It could not be expected that the interests involved in the creation of a vast body of debtors to the Crown would leave the government free from assault by those who desired to cancel their indebtedness, and those who intrigued for support among the debtors. Many ministries essayed the task of amending the land laws; some succumbed under it. On one occasion Sir J. Robertson spoke boldly in public against any abandonment of its dues by the State.

"In these days, when an attempt was being made to avoid the payment of interest by free selectors, he was glad to see that some disclaimed repudiation. The government in that direction must consider the interests of the whole people. . . . What had to be considered was whether the people who had not got the land would be willing to pay this £450,000 per annum interest for those who had."

Gradually the public learned the truth of the arguments which had been urged against "free selection before survey." At the end of 1880 there had been 141,329 selections, comprising 15,677,070 acres under the Land Act of 1861 and its successors. It was found that a large proportion of the selections, *i.e.*, 36,628, comprising 4,003,391 acres, had lapsed, or had been cancelled or forfeited; and the public knew that much land had passed into private hands[12] in a manner not intended by the Legislature. What argument and prophecy failed to teach was taught at last by facts.

The Parkes-Robertson ministry fell in 1883. Mr. Stuart, leader of the Opposition, had formulated his views. Free selection subjected the pastoral tenant to plunder, and the *bonâ fide* selector to oppression.[13] Rancour was engendered and fraud was common. He would divide the territory into zones, in the outermost of which he would, while retaining the freehold, afford security for pastoral avocations, and agriculture would prosper elsewhere in suitable areas. Security of pastoral holdings would enable

[12] The loss on the millions of acres parted with by the Crown under the system of selection may be surmised, but cannot be calculated.

[13] "If a pastoral tenant could by an outlay of money improve his run by well-sinking, dam-making, or in any other way, he dared not do it. Why? Because in the first place it brought an army of locusts about him, in the shape of free selectors, who dotted themselves all round about him, and compelled him in self-defence to play game against game, and move against move. The whole policy seems to me an immense game of chess. It is one trying to checkmate the other, causing confusion, expense, and waste of labour." (Speech of Mr. Stuart.)

the government to derive larger revenue from the holders. The country responded favourably to Mr. Stuart's appeal, and when he became minister (Jan. 1883) he appointed a Commission to report upon the whole condition of the public lands, their tenure, and their alienation.

Subsequent legislation from 1884 to 1895 corrected many faults in Robertson's laws, but left the Statute Book complicated. The vices of promiscuous free selection were in some degree tempered in 1884. For the fixity of tenure acquired by lessees they were called upon to pay a higher rental. The colony was divided into Eastern, Central, and Western Divisions. The first embraced the bulk of the land occupied by early settlers. The Central comprised about 55,000,000 of acres between the Eastern and the Western, in which latter division it was the aim of the Legislature to promote pastoral security by granting leases for twenty-one years. The area of selections, or conditional purchases, in the Eastern division was limited to 640 acres, at a price of £1 an acre, and in the Central to 2560 acres. In the Western such purchases were only permitted in special areas. Many other provisions were made, but their details need not be dealt upon in this narrative.

In general progress, apart from the evils caused by rash legislation, the community maintained a high reputation for liberality, honour, and hospitality. Charitable institutions were largely supported. The Bench administered justice without fear or favour. The stranger was welcomed as a friend, and could find society yielding to none in any part of the world for grace of manner and tone; although the gatherings at Governors' receptions had become less select than in the days which preceded the gold discoveries and responsible government.

When Prince Alfred visited the colonies the loyalty which greeted the son of the Queen was fervid, and when an assassin shot the Prince from behind (March 1868) the indignation of the crowd would have torn the man limb from limb but for the intervention of bystanders and the police. The prime minister (Mr. Martin, the Attorney-General) conducted the prosecution with temperate decorum,

and the man was hanged for an attempt to murder, not because his intended victim was a Prince, but because such an offence, against whomsoever committed, was so punishable by the colonial law.

The services of the Earl of Belmore in guarding against financial abuses in New South Wales have been noticed as laying the colony under obligation, and his successors have been mentioned.

The statistical progress of New South Wales will most conveniently be scanned in juxtaposition with that of other colonies. Ships were built in early days, but the industry largely expanded as wealth and population increased, and without resorting to the conceit that happiness was dependent upon prohibition or restrictions, New South Wales saw her arts and manufactures prosper by allowing the energies of her people free scope in any direction which commended itself to their enterprise and good sense.

The tariff which Deas Thomson passed in 1852 aimed at reducing to the smallest number the articles on which, for fiscal purposes, and for them only, it was desired to impose Customs duties. Until 1864 no serious attempt was made to destroy his handiwork. In that year it was found that successive ministries had involved the finances in confusion. To meet a deficiency of £400,000, the ministry introduced a tariff of a protective character; its chief (Mr. Martin) having been long notable for a qualified tendency in that direction, to which most of his political friends were disinclined. The Assembly passed a bill which the Council rejected. Free-trade was the battle-cry in New South Wales at the same time that Francis and McCulloch were resorting to violence to enforce protection in Victoria. Mr. Martin went back shorn of his strength, and in two months Mr. Cowper formed a ministry to guide the free-trade majority chosen by the electors.

Parkes, having returned from England after a mission on which he had been despatched by Cowper, was again in the House, and contributed to oust the Martin ministry. Cowper's Treasurer (Mr. T. W. Smart) proposed a stamp tax and a package duty, which were adopted. Still the finances were in disorder. The session which began in

January, and closed in June 1865, was followed by another in October, and Mr. Cowper proposed (Dec.) a duty of 5 per cent. *ad valorem* on all imports, which was received with exultation by the protectionist minority whom Cowper had driven from the ministerial benches, and by Cowper's own followers. Their conduct was denounced by Parkes as "the triumph of the successful double-dealing and manœuvre of their slippery chief." If members returned under the auspices of the Free-trade Association would sanction the "downright political profligacy" of such a scheme, "farewell to all consistency in public life in the country!"

Maugre his protest, the scheme was adopted, and it was not until another Martin ministry, which included Parkes, another ministry under Robertson, and another under Cowper, which included Robertson, and another under Martin (which also included Robertson) had successively wielded power, that Parkes himself became the head of a ministry which, in 1873, swept away, in a time of financial prosperity, the tariff which he had denounced. The Sydney tariff of 1865-6 could not be called protective when compared with that of Victoria, but from the date of its repeal in 1873 curious eyes were bent upon the commercial and productive developments in the two colonies, adjacent in territory, but divergent in policy. Those who measure happiness by statistics may find food for reflection in the following figures :—

	Population.	Public Debt.	Total Value of—		Inward & Outward Tonnage.
			Imports.	Exports.	
N. S. Wales, 1873...	560,275	£10,842,145	£10,959,864	£12,618,755	1,762,478
,, ,, 1892...	1,197,650	54,473,433	20,776,526	21,972,247	5,647,184
Victoria, 1873 ...	772,039	12.445,722	16,533.856	15,302,454	1,519,015
,, 1892 ...	1,167,373	46,774.125	17.174.545	14,214,546	4.456.254

The interest in the comparison is enhanced when it is borne in mind that in 1864, when protective duties were introduced in Victoria, the relative figures were :—

	Population.	Public Debt.	Total Value of—		Inward & Outward Tonnage.
			Imports.	Exports.	
For N. S. Wales...	390,863	£6,073,000	£10,135,708	£9,037,832	1,254,225
For Victoria ...	601,343	8.443,970	14,974,815	13,898.384	1,261,814

Customs duties were not to remain unaltered in New South Wales. The ministry of Sir A. Stuart (which was formed in 1883 in consequence of the defeat of a Parkes-Robertson ministry on their Land Bill and a dissolution) was terminated by the demise of Sir A. Stuart. Mr. Dibbs, who had been a member of the ministry, became the head of an administration which died in less than three months, and Sir J. Robertson, being sent for by the Governor, made overtures to Parkes, to whom he offered the leadership, which Parkes declined.

Robertson being defeated, Lord Carrington (the Governor) sent for Mr. Jennings, who formed a ministry, in which he included Mr. George Dibbs, at whose instigation a bill was brought in which Parkes vainly opposed (1886) as false to free-trade.[14] Dissensions among themselves destroyed the Jennings ministry, and the Governor called Parkes to his councils early in 1887. Parkes obtained a dissolution. He alleged, in a powerful address, that he had left in the Treasury a surplus of nearly £2,000,000, and that his successors had, in four years, created "a deficit of at least £2,500,000," and, obtaining a majority, he quickly repealed the Customs Duties Bill of Dibbs. In 1888 he passed a Public Works Act, which created a Standing Committee of both Houses to safeguard the intentions of the Legislature; a Railway Commissioners Bill, exempting the railways from political management; and the Chinese Immigrants Bill, elsewhere described. At a new session (Oct. 1888) Parkes carried an address to the Queen, submitting that it was desirable that in future the colonial government should be informed "of any intended appointment to the high office of Governor before such appointment is finally made." Though such a course involves the manifest risk of clouding the appointment of a Governor with a local party taint, the address was carried. Mr. G. H. Reid voted for it, though he pointed out that "the more interference is exercised by a local government with reference to the appointment of a Governor, the more

[14] In his book ("Fifty Years, &c., of Australian History," London, 1892) Parkes said: "Mr. Dibbs, a strong free-trader throughout a long life, did not announce his conversion till the year 1887, and then only in view of taking the leadership of the protectionist party."

impaired will be his independence, the less desirable his position, the more open will he be to the suspicion of partiality, and the more unfortunate will be the position of the opposition."

In January, 1889, though recognized as a Parliamentary tactician, Parkes sustained defeat with regard to the appointment of a Railway Commissioner, and Lord Carrington called upon Mr. Dibbs to form an ministry. Mr. Dibbs forthwith declared that the "fiscal policy" of the country ought to be changed in the direction of "protection." Parkes carried a motion of want of confidence when the Parliament met, and the Governor at once sent for Parkes. Mr. Dibbs had wantonly induced the Governor, before the Houses met, to call no less than nine new members to the Upper House; a procedure which violated the rule laid down and accepted in 1861.

In 1890 Parkes had to confront the troubles created by the "strike," in which—to use his own words—"workmen were maltreated to force them to desert their employment, and intimidation put on a bold and a savage front." He brought forward an Electoral Bill, and carried the second reading by a large majority; but on a bill concerning coal mines was outvoted in 1891 (according to his own statement) by votes of "Labour members."[15] It may have been for the time injurious to make Parkes give way to Dibbs, but Parkes must have felt in his heart that his own labours had conduced to such a result. Sheer degradation of the suffrage was his aim when, with Lang and others, he opposed Wentworth's effort to prevent the bulk of ignorance from overwhelming the intelligence of the community at the polls. He had used the people for his own purposes, and in the fulness of time they neglected him for what they deemed their own.

In his narrative (quoted above) Parkes wrote that "the Labour members, capriciously voting with the small knot of mischief-brewers," decided his fate in 1891. Mr. Dibbs succeeded him, and passed in that year a tariff which put an import duty of £3 per ton on rice, a product not grown in the colony. Passed so casually, Dibbs' handiwork was discarded with general approval when Mr. G. H. Reid

[15] *Vide infra* p. 506.

carried an avowed free-trade tariff in 1895. Victoria, meanwhile, like Titania in her stupefied condition, was enamoured of her crazy ideals. The protection introduced by McCulloch and Francis in 1864 was intensified by Mr. Berry in 1877 and later years. In a time of inflation, when even those looked upon as sober-minded joined in wild speculations with money poured from the mother country on loan, a ministry in which Mr. Berry was Treasurer (1892) filled fuller the stupefying cup by imposing duties which the historian can hardly record with hope of finding faith in his word. The ensuing disasters brought about some shame or repentance, and in 1896 reductions of duties were made under a Turner ministry, although hampering conditions still remained which injured Victoria and created confusion on the banks of the Murray River. The character of the Victorian tariff may be estimated by the fact that an irritating tax upon live stock crossing into Victoria was maintained in spite of the ridicule which it created.[16]

At this stage the narrative of events in Victoria may be brief, inasmuch as the chapter dealing with constitutional struggles has shown how the conception of securing healthy circulation by interfering with its natural channels had birth; how it was cradled by Mr. Francis, fostered by McCulloch, and pampered by Duffy, Berry, and others.

Sir R. Bourke's Church Act, which applied to Port Phillip as a part of New South Wales, was repealed in Victoria in 1870. In 1857, in 1860, and in 1861, the Legislative Council threw out repealing bills which had been passed by the Assembly. Mr. McCulloch was Prime Minister in 1870. His old comrade in enforcing protection Mr. Francis, Mr. A. Michie, and Mr. T. T. A'Beckett were his colleagues. Mr. Macpherson, who expelled a McCulloch ministry in 1869, and was expelled by McCulloch in 1870, was received into the ministry which McCulloch immediately formed. The abolition of State aid was to take effect after

[16] The abject condition to which a self-styled leader of the people may be reduced may be illustrated by the fact that one of the "great toes" of Victoria (who had with stentorian voice advocated protection in order to raise prices and benefit local workmen) when challenged in 1896 on the ground that prices had not been raised, thought it a sufficient defence in his mouth to shout that protection did not raise prices.

five years; and, to bribe the different denominations to consent to the prospect, the bill enabled them to dispose of and apply to their use all lands which had been granted to them, and from which the benevolent Latrobe had fondly hoped that, in murky towns, generation after generation would derive free air and health, as well as spiritual profit. By the Constitution Act an absolute majority of the whole House was required for the second and third readings. The majority was obtained by eighteen votes against seven in the Council. If economy was aimed at the effort exhausted the Houses; for in the same year a Payment of Members Bill was passed. It was observed that many who opposed the abolition of grants for religious purposes voted against paying members of Parliament; and that the majority which effected the nominal saving voted for putting it into their own pockets.

The question of education was often discussed. The dissipation of power, and the doubtful advantage of maintaining two boards, working separately if not in antagonism, produced their natural result. Many men were weary of such an application of the machinery of the State. The advocates of denominational schools, though not powerful enough to destroy the united system, succeeded in thwarting all endeavours to interfere with their own. It was reserved for a man not in office to carry a measure which directed into one channel the resources of the Treasury.

Mr. O'Shanassy, the friend of sectarian grants, was driven from office in October 1859. Amongst the charges against him was abuse of patronage, of which the chief instruments were Mr. C. G. Duffy and Mr. R. D. Ireland, the first being Minister for Lands, and the second Solicitor-General. O'Shanassy was replaced by Mr. William Nicholson, the old opponent of transportation, and the "father of the ballot;" who, resolute in honourably dispensing public patronage, offended followers who had found previous ministers more pliant. During contests between the two Houses upon a Land Bill in 1860, Mr. Service and Mr. Francis resigned, and the ministry was seriously weakened in public estimation, although all the causes of the defections were unpublished. When, after a recess of

two months, Parliament was reassembled, a plot had been hatched by Mr. O'Shanassy and others. If he had moved a resolution of want of confidence it would have been rejected. He put forward Mr. Heales (generally his opponent in politics, but lured to desert Nicholson) and several others, amongst whom Mr. G. F. Verdon appeared.

The plot succeeded. Nothing was proved against Nicholson, who was ostracized by votes previously arranged. The new ministry was so completely without a guide, that when the successful conspirators met to arrange their plans they determined the question by secret voting. The choice fell upon Mr. Heales. In order to retain a convenient source of information, Mr. O'Shanassy secured the appointment (as Attorney-General) of Mr. Ireland, who had been O'Shanassy's Solicitor-General (1858-9).

Mr. Brooke became a minister. Mr. Humffray, the delegate from the Ballarat goldfields in 1854, became Minister of Mines. Mr. J. M. Grant joined the ministry soon after its formation. It sustained defeat (in 1861), when Mr. O'Shanassy thought his time had come. The majority against the ministry was large in the Assembly. In the Council they could hardly be said to have a supporter. The minister (Mr. R. S. Anderson) who represented them there at the beginning of their career had quitted them. Nevertheless, such was the adroitness of Mr. Ireland that Sir H. Barkly, the Governor, was persuaded to dissolve the Assembly within a year of its election, although a large majority in it was ready to support a ministry formed from its ranks.

For once the wisdom of Sir H. Barkly appeared to sleep. The elections sent the ministry back to Parliament, but their reputation as to financial unfitness enabled Mr. O'Shanassy to drive them from office. With characteristic effrontery, Mr. Ireland, who had quitted the Heales Ministry after obtaining for them a dissolution, took the post of Attorney-General under O'Shanassy. Mr. C. G. Duffy went back to the Lands Department. The new chief was (Nov. 1861) at the head of a coalition, which his administrative ability enabled him to control. Mr. Haines, the accredited head of those whom O'Shanassy had formerly opposed, became Treasurer. There were ten in the Cabinet;

but it was expected that it would be controlled by the strength of O'Shanassy and the intrigues of Duffy and Ireland.

At a very early date Mr. O'Shanassy gave warning that his hand would be heavy on institutions he did not like. Mr. Haines had, like himself, opposed the national system of education. Before Mr. Heales left office he had corresponded with the National Board as to its financial requirements, and had (25th Oct. 1861) informed the Board of the amount which would be placed upon the estimates for the ensuing year.

Mr. O'Shanassy resolved to repudiate his predecessor's act; and his breach of faith hastened the abolition of the denominational schools which he wished to serve. Within a week of his assumption of office he called upon the National Board for a statement (not of their requirements, but) of their actual liabilities. They gave it. They had previously, at O'Shanassy's suggestion, informed the Treasurer that, unless the government intended to enable them to continue their current payments to teachers, it would be necessary to give a (stipulated) month's notice to those who would be discarded by the refusal of the government to pay their salaries. Mr. Haines, after delay, answered that he could "only suggest the advisability of at once giving the notice." Told that his delay had made it impossible to give the legal notice in time to apply it to 31st December, but (if thought necessary by him) it could be applied to 31st January 1862,—he could "add nothing to his (former) suggestions." [17] These acts were warnings that, with O'Shanassy, Haines, Duffy, and Ireland in power, there was danger, overt and covert, to the cause not only of united education, but of good faith. Their display of partiality defeated their own projects.

The despised Heales, though out of office, found a majority to assist in passing a bill for the "maintenance and establishment of common schools"—and neither the capacity nor obstinacy of O'Shanassy, nor the craft of Duffy and Ireland, prevented the bill from being transmitted to the Council (12th June 1862) and passed without

[17] Victoria Legislative Council Proceedings. 1861-2. A. 6.

a division. It dissolved the Denominational School Board, and vested in a new "Board of Education" the property held by the National School Board. It set apart not less than four hours for secular instruction, but threw no obstacles in the way of imparting religious instruction at other times to children whose friends wished them to receive it. It enabled the Board to permit children whose parents or guardians were destitute to receive gratuitous education, as had been customary under the national and denominational systems; although in a country where wages were high remission of fees had been rare, and when made excited no invidious remarks.

Two defects clogged the Act. One—that it was not enacted that the Board might withdraw aid from any one of several schools which, though possessed of the minimum attendance of pupils, were so contiguous that all such schools were not needed—might have been overcome by administration, or by a brief amending Act, if the government had been loyal to the principle of the law. The other—that the government might appoint as members of the Board sworn foes of united or common education—was one of which Mr. Heales was warned in vain during the progress of the bill. Mr. O'Shanassy availed himself of it in order to warp the measure from its purpose, not foreseeing that his temporary success would lead to a measure still more odious in his eyes. There had been on the defunct National Board members of various religious denominations, including the Roman Catholic,[18] who had laboured for the common good without fee or other reward than that derived from a sense of doing good to all, and seeking special favour for none. These, or such as these, should have been selected to administer the Act which, in its main principles, continued the operations of the National (or Lord Stanley's Irish) system, such as it was when Archbishops Whately, of the Church of England, and Murray of the Church of Rome, gave it their sanction. The members of the defunct Denominational School Board had been appointed on different grounds. However honourable they might be,

[18] As a colleague who saw the worth of Thomas Herbert Power, the author may be excused for recording his name as that of one whom the bigotry of others could not warp from charity and duty.

the tendency of their office was to make them crave, each for his own sect, as much public money as possible. The voracity of each for morsels was only checked by the fact that one denomination could not begin to swallow until the portion of each had been fixed.

Men of such disposition and training were ill-adapted for the new Board. Yet O'Shanassy appointed them to administer a law framed on principles which they had strenuously resisted. They, trusting to his support, undertook their task, and the healthy working of the new system was cramped from the first; although the popularity of the Act tempered the display of open hostility. It is needless to trace the administration of the Act. It will suffice to say that, emboldened by success in various artifices, Mr. O'Shanassy's principal factor tested in a court of law the power of the Board to withdraw aid from an ill-attended Roman Catholic school in a country district, and to devote it to a more efficient school in the neighbourhood. Loyalty would have resolved doubts by asking for amendments adapted to the spirit of the Act. But some members had been appointed for no such purpose. The public saw with disgust the law wrested from its plain intention by men whose duty it was to administer it in good faith. A peculiar conjuncture afterwards enabled a ministry, of which Mr. J. G. Francis was the head, to visit upon Mr. O'Shanassy his own sins, and startle the colony into the hasty enactment of a measure for which there was no demand, and of the miseries arising from which it is impossible to foresee the end.

Mr. C. G. Duffy was for a time the chosen champion of his Roman Catholic fellow-subjects. He had quarrelled with O'Shanassy, and there had been accusations and recriminations, reconciliations at the request of their Roman Archbishop, and renewals of strife. Through agency of astute friends, sometimes O'Shanassy, and sometimes Duffy, assumed prominence in affairs affecting the Roman Catholic sect. Their followers condemned neither of them, but devoted special attention to the one who was in a position to confer favours.

At this period Duffy was their Coryphæus. He had, in twelve months, distributed favours on a startling scale.

He clung to office,[19] and urged the Governor to dissolve the Assembly. The majority which expelled Duffy had been small, and Mr. Francis and his friends, seeking to weaken Duffy, seized upon the education question as one which might serve their purpose. The bulk of the population had always befriended united education, and the feeling in favour of it had been strengthened by time and by the acts of Mr. O'Shanassy's crookedly-constructed Board. There were also, in populous places, many who drank in eagerly, as liberal, any doctrine savouring of repugnance to authority, law, and religion. Mr. Francis availed himself of their help. The coalition ministry which had been formed by Francis was compounded of those who had abetted McCulloch's proceedings in 1864-5-6, and 1868, tempered by others who had denounced them. Of the first class were Messrs. Francis, Casey, and Mackay; of the second were Messrs. Langton, Kerferd, and Gillies, who had been prominent in Parliament; and Mr. J. W. Stephen (Attorney-General), who, out of Parliament, had been energetic in protesting against the acts of McCulloch and Francis in the past.

The ministry determined to introduce a system of secular education, which should prevent the giving of religious instruction in school buildings even during the time which preceded the formal opening of the schools. One plea for the bill was the fact that large numbers of children—"the gutter-children" they were called—received no education. The watch-word was education free, secular, and compulsory. At first Mr. Stephen, who introduced the bill, argued that if education were to be free it could not logically be other than compulsory. When he was reminded that many other things were compulsory which were not free, he was in want of arguments, but not of supporters. When told that to relieve the parent of his most solemn duty must be demoralizing, he pleaded that he could not carry his project without offering the bribe

[19] The observant Anthony Trollope was in the colony, and heard some portion of the debate which drove Duffy from office. He remarked ("Australia," &c., vol. i., p. 512): "A ministry that was beaten in June 1872 was turned out solely on the ground that it had misused its patronage."

of eleemosynary education. When told that the human mind would not tamely submit to the ostracism of religious teaching, he replied that he hoped his system would stamp out not only denominationalism in schools, but every other "ism" in religion, even Presbyterianism. When told that by hostility to the efforts of parents to secure religious education in a manner fair to all, and partial to none, he would furnish them with a grievance which might be prejudicial at the polls, he laughed at the idea. When warned that the millions sterling which would be sunk in erecting school buildings would lay an unnecessary burden upon the people, and that excellent schools supported by private enterprise would be crushed out of existence by free schools, he said that he would spend so much in bricks and mortar that it would be impossible for any government to undo his work, whatever the resulting taxation might be. When told that a clause remodelling the existing Board of Education, and empowering them to apply public funds on sound principles, was all that was needed, he said it was too late to think of that, for he had formed his resolution. Thus was a radical change effected in a few weeks in a manner which took the country by surprise.

In spite of opposition the bill passed through the Assembly. Mr. O'Shanassy sat at the time in the Council, and moved that the bill be shelved, but was defeated. In committee, Mr. Niel Black attempted to strike out the clauses which compelled the State to demoralize parents by giving gratuitous education, but was defeated by fifteen votes against ten. Nothing daunted, he obtained assent, by a majority of one, to the elision of a proviso that "secular instruction only" should be given in any State school building. On a subsequent day the ministry found two more supporters, by whose aid they reinserted the prohibition; the Council adding a proviso that nothing in the Act should "prevent the school buildings from being used for the purpose of imparting religious instruction by ministers . . . or laymen . . . at such hours other than those used for secular instruction as by regulations may be fixed by Boards of Advice in each district."

The representative of the government, Mr. Fraser, averred that the words were unnecessary. He had been told that the bill as it stood would permit such use of the buildings. This was palpably erroneous, and the Council insisted. They also carried a clause making the local Boards of Advice elective by ratepayers instead of nominated by the government, and thus gave some voice to the people. In the Assembly Mr. Stephen, dreading lest the bill should be lost (as the prorogation was at hand), substituted for the amendment of the Council the words—"But nothing herein contained shall prevent the State school buildings from being used for any purpose on days and at hours other than those used for secular instruction." At the same time, like his colleague in the Council, he averred that even without them the previous words—"In every State school secular instruction only should be given, and no teacher shall give any other than secular instruction in any State school building"—did not debar the giving of religious instruction in the manner desired by the Council.

The force of unreason could no farther go, but the Council unwisely accepted the amendment. The Governor-in-Council was empowered (sec. 18) to make regulations for the use of school buildings: the Boards of Advice were empowered "to direct, with the approval of the Minister (of Education), what use shall be made of the school buildings after the children are dismissed from school, or on days when no school is held therein." Mr. Stephen administered the Act, and, incredible as it may seem, it is true that he and several successors in office refused to make the regulations which the Act enabled them, and them only, to make respecting the use of the school buildings before school hours, and thus violated the understanding upon which Mr. Stephen was allowed to substitute his amendment for the one made by the Legislative Council.

The operation of the Act in the first four years showed that the bribe of free education emptied many private schools. Affluent people were known to send children in carriages to receive pauper education. Prophecies of demoralization of parents were accomplished. They who had not applied for alms did not refuse them when proffered. But a notable result speedily followed. It was felt that if the

"gutter children," in whose name free education had been sought, should be haled to the schools in rags under the compulsory clauses, the children of the affluent would be withdrawn, and the system would appear to have failed. It was determined that the poor children should be left in their squalor, and the streets reeked with urchins on whose behalf so much had been said, and for whom nothing was done. The boasted humanity of the Act was strangled by its authors.

To make the system seem to succeed was the object. Profuse expenditure on buildings squandered more money in the first year than the total annual cost for all purposes under the former Common Schools Act. The administrator of the Act was alarmed by an expenditure largely in excess of the provision. The fact was kept from view, and further liabilities were incurred without authority, but, as Parliament increased the grant for the succeeding year without demur, the facts were never generally known. Money was spent in compensating teachers. One who taught a common school terminated his connection with the Board of Education (31st Dec., 1872) and "endeavoured to start a private school." Gratuitous teaching elsewhere left him without scholars. He went to Mr. Stephen, and was offered employment under the new Act.[20] He received afterwards £1137 18s. 11d. as compensation, though his abandonment of the public service had been voluntary. By such means thousands of pounds were added to the public charge. Under the Common Schools Act the annual average cost had been less than £155,000. In 1872 it was £220,000.

Under the new Act the first year's expenditure (1873-1874) was			£503,117
,,	,,	expenditure in 1877-1878	£717,761
,,	,,	expenditure in 1890-1891	£845,558[21]

Some Councillors must have felt that in refusing to support Mr. Niel Black's amendments they had not only entailed demoralization upon the country, but loaded it with

[20] This gentleman published a statement of his case in a newspaper.

[21] "Victorian Year-Book," 1893, p. 137. Other funds were expended on Industrial and Reformatory Schools. The worthless, who abandoned their children, concluded that as the rich received alms in the shape of free education deserted children would obtain like charity.

debt. The common schools would have better done the secular work, and the spectacle of a government in a British colony contending against parents and pastors who desired at their own cost to impart religious instruction in the school-rooms before the arrival of the hour for secular teaching would not have been seen. The Roman Catholic portion of the community opposed the Act, and maintained at their own cost many schools. They hoped by importunity to weary the people and the government into giving them a special grant, which they asked for under the specious name of payment by results; but which would, in truth, if other sects had been relegated to the State schools, have constituted the Church of Rome the one endowed Church in the colony. The earnest and eloquent Bishop of the Church of England—Dr. Moorhouse —wrung to his inmost soul by the denial of a right to read the Word of God to children, pleaded with his people and with the government, and would have gone through any indignity but wrong-doing to carry out the Great Teacher's wish that little children should be brought to Him. In neighbouring New South Wales, meanwhile, under safeguard of a conscience-clause, ministers could freely impart religious teaching in the schools. But many persons adopted the doctrine that "free, compulsory, and secular education" was a new starting point for the human race. It was deemed illiberal to allow a parent to obtain religious instruction for a child, even at the expense of the parent. The great bribe of free education might be imperilled if any change were permitted in the administration of the law.

It is to be hoped that the public in Victoria may yet awake to their danger, and recoil from the Frankenstein of unbelief and the want of reverence which the administration of the Education Department tended to engender. They were not unwarned, but would not believe that danger existed. It is hard to persuade men actuated by no irreligious motive that their acts have an irreligious tendency. It will be dismal for their descendants to be plunged into moral disorders because their fathers would not see even though they were warned.[22]

[22] The text was published in 1883. In 1896 the evils pointed out had not been guarded against. What has lately been known in England as

In grants for intellectual culture Victoria was ever liberal, and the Public Library of Victoria deserves mention. The University was founded by Mr. Latrobe in imitation or emulation of that which was established in Sydney. The Public Library was also founded by him, but he had no example to follow; nor perhaps, unless he had been able to find the man as well as name the hour, would the great work have been accomplished for which Victoria became eminent. Mr. Latrobe had appointed Mr. Redmond Barry Solicitor-General when Victoria became a separate colony. In 1852 Mr. Barry became a Judge of the Supreme Court. In 1853 Mr. Latrobe committed to him, as principal trustee, the Public Library. It is not too much to say that to his devotion and industry the institution was indebted for its growth and the hold which it gained upon the affections of the community. It is not often that the life of a public institution depends on the labours of one man. But this may be said of the Melbourne Public Library, to which he secured free access for the public from the first, and to which his fostering care in process of time added a National Museum and an Art Gallery. Coadjutors he had, but no compeer; and when he died in 1880 there was a sense of a national loss in the vanishing of Sir Redmond Barry from the place in which he had laboured so long. Nor were his efforts confined to the library. Mr. Latrobe committed to him the preliminary care of the nascent University in 1853. The Council of the University elected him their Chancellor, and annually re-elected him throughout his life.

"the Nonconformist conscience" has been aroused. The Rev. E. Isaac said:—"In this colony no observant person could doubt that during the last few years there had been an increase of immorality. . . . He could not be labelled as a pessimist for making that assertion, because he was sorry to say that it was only too patent that there had been a lowering of the moral tone of the community." The Rev. W. H. Fitchett emphasized these words by saying:—"Imagine our Saviour going into a Victorian State school where 500 children were gathered together. He would find that they must not mention His name, nor read the story of that Saviour who took little children into His arms and blessed them! The thought of this thing scorched one like a flame of fire."—(*Argus*, 26th Aug. 1896.) Yet "this thing" has been legislated for and maintained for a quarter of a century; and such things are brought about by submitting problems of State to the behests of crowds controlled by a "caucus."

The succession of Governors in New South Wales has been told already. In Victoria Sir Henry Barkly assumed office in December 1856. His tact and ability enabled him to cope with the difficulties of a position rendered troublesome by previous events, and by ministers prone to lawless acts when thwarted. His suave sufficiency diverted one ministry from a declared purpose to tack a question of policy to the Appropriation Bill, but he did nothing to provoke public discussion of his success. Armed at all points, but never boasting of his armour, the patron of science and promoter of all social improvement, he was respected by all whose esteem was desirable. He retained his position beyond the usual term of office, governed at the Mauritius for another protracted term, and closed his career as Governor with a third, also protracted, at the Cape of Good Hope.

The unfortunate Sir Charles Darling assumed office in Victoria in September 1863, and was hurried by his advisers into the proceedings already described. His submissive reign contains little record beyond them. Deep sympathy was felt for him, even by those whom he misrepresented. It was not doubted that he was willing to act rightly. Had he had no tempter he had not found sin.[23]

His successor, the Hon. J. H. T. Manners Sutton (who succeeded to the peerage as Lord Canterbury while in Victoria) brought to his task much knowledge of Parliamentary lore, and it may confidently be affirmed that without fear or favour he maintained the impartiality of his high office in the critical time which followed the misgovernment of Sir C. Darling. The story is told in another chapter; but the comment of the Canadian historian, Todd, may be quoted here. "Under circumstances of unparalleled difficulty, he acted in a most exemplary and statesmanlike manner, combining firmness with moderation, and evincing a thoughtful regard for the interests of all who were concerned in the issue of the struggle." Long after the controversy about the grant to Sir C. Darling had been appeased, the defeated Duffy ministry claimed a di be uld

[23] After the publication of the 1st edition of this History, one of the chief tempters ostentatiously declared that he would again do, if he had the opportunity, all that he had done in the time of Darling, &c. It had therefore necessary to retain in this edition the narrative of the first. nd as

solution of the Assembly, and strove to convince Lord Canterbury that the claim was undeniable. Mr. Duffy averred that it had become in England a "maxim of constitutional law that the alternative of resignation or dissolution is left absolutely to the discretion and responsibility of ministers." Lord Canterbury thought it questionable whether a succession of precedents in recent years had given the strength of a maxim of constitutional law to Mr. Duffy's allegation as regarded England, and explained that on a Governor, personally amenable to the Crown, serious responsibilities were imposed, of which no Governor could divest himself. He proceeded to demolish the special reasons on which a dissolution was claimed. Mr. Duffy thereupon resigned, and a ministry was formed which belied Duffy's prophecy, that the existing Parliament could not furnish a strong government. Lord Canterbury found the colony convulsed, and left it in peace, carrying with him the good wishes of all, and the respect of Parliament.

His successor, Sir G. Bowen, on leaving Queensland, governed in New Zealand until 1873. While his despatches teemed with praises of his own impartiality it was complained that only in them it was to be found. He wished to be on good terms with all, suffered the proverbial consequence, and was soon immersed in troubles which might perhaps have been averted by the tact, or prevented by the sagacity, of Lord Canterbury, or of Sir Henry Barkly. The story of those troubles has found a place in the narrative of the relations of the two Houses in Victoria.

Of the Marquis of Normanby, who succeeded Sir G. Bowen, it may be said that his experience in both Houses of the Imperial Parliament, and his career as Governor in Nova Scotia, in Queensland, and in New Zealand, induced a general belief in his capacity, when he went to Victoria, and that on his arrival there were no voices to proclaim that anything but adherence to duty could be expected from him. In Queensland, in New Zealand, and in Victoria at critical times he exercised statesmanlike prudence when urged to grant dissolutions in a manner which would serve party rather than the State; and his reputation was high, not because he boasted of his work, but because wherever he served his Queen he was recognized as a worthy

upholder of the honour of an English nobleman, versed in public affairs. The eminent services of Sir H. Loch were secured for Victoria from 1884 to 1889, and the Earl of Hopetoun succeeded him. It suffices here to say that both of them secured not only respect, but affectionate esteem. In 1895 Lord Brassey, voyaging to the colony in his yacht, the *Sunbeam*, under his own command, arrived at Melbourne as Governor amidst universal demonstrations of welcome.

Although the land question in Victoria has been dwelt upon previously, it is necessary to allude to it here. Mr. Haines and his colleagues strove in 1857 to pass a measure dealing with the subject on which the Commission appointed by Sir C. Hotham had furnished such conflicting opinions. After long debates the bill reached the Council (8th Sept. 1857). Originally (1857) Mr. Haines proposed leases "to the present authorized occupants for pastoral purposes at an acreable rent so as to produce an average of twopence for each acre available for such purposes," and that leases should not be issued to other persons unless submitted to competition by auction. An amendment, declaring that leases should not issue at all, but that the occupants should pay for annual licenses to use the lands at the rate proposed, was carried in January 1857 without a division. In 1857 Mr. Haines, again in office after temporary expulsion, fashioned his bill on the resolutions formerly passed. But a change had come over the minds of the men in opposition. Antipathy to squatters was revived. From rural town and village delegates were sent to Melbourne. They sat as a convention, as if to overawe the Parliament. Their characters were diverse. A man who subsequently strove by fraud to stuff an electoral roll for the Legislative Council appeared as a delegate from a suburban district in which he had resided, and for offences in which he had been convicted before the petty sessions. Two or three persons delegated him to the Convention in compliance with an invitation from the secretary of a League. There he found others who had been, or who were to be, victims of justice like himself; and he, twenty-three years afterwards, was, on conviction of fraud, to suffer imprisonment with hard labour. But all of the motley

eighty-eight were not of his class. Some populous places sent no delegates. A few persons gathered in an alehouse in a rural district sent several. Mr. Wilson Gray, a briefless barrister, was bursting with the conceptions of Irish land reformers. Mr. Gillies, a member of the Ballarat Mining Court, for the first time brought before the Melbourne public talents for debate in which he was not afterwards surpassed when they were transferred to Parliament. Mr. G. Verdon was sent from Williamstown. Mr. Wilson Gray became President, and the Convention sat from the 15th July to the 6th August. Wild schemes were broached. Like the ass which rubbed off its useful ears in endeavouring to obtain horns, the Convention would have chased from Victorian pastures the live stock[24] in the land, in order to make homes for farmers by selection "over all the unalienated lands of the colony, surveyed or unsurveyed," and by making all unalienated Crown lands "open as free pasturage for the public." Having condemned the Land Bill, the members affirmed (Aug. 1857) that the following principles were essential to happiness:—Manhood suffrage; equal electoral districts, based on population, for both Houses; abolition of property qualification for members of both Houses; "abolition of preliminary registration of voters, as tending to the disenfranchisement of the people;" and payment of members, which they advocated "with special emphasis and force." They met twenty-two members of the Assembly at the House, including O'Shanassy, Duffy, Humffray, Owens, and Blair, as well as Mr. Foster who was in 1854 the object of hatred to some of his companions of 1857. Nevertheless, Mr. Haines's bill emerged safely from the Assembly. The Council, to the mingled surprise and joy of their enemies, instead of eagerly passing the bill alleged to be framed in their interests, ordered it (22nd Sept.) to be read a second time that day six months.

Every prophecy about the bill and its reception by the Council was falsified. The upbraided Upper House administered as short shrift to the bill as could have been desired by the mock Parliament, which, in the name of a

[24] Nearly 5,000,000 sheep and more than 600,000 cattle.

Convention, had assumed, like its French prototype, to pronounce upon the destinies of the country, and which, after appointing a "Council of the Convention," was adjourned *sine die*.

It devolved upon Mr. W. Nicholson to pass the first measure, which dealt with the general settlement of freeholders on the Crown lands. Mr. Service was Minister for the Land Department. McCulloch and Francis were in the ministry, and Mr. J. Dennistoun Wood was Attorney-General. The Land Bill authorized selection after survey, and enjoined the Government to survey within twelve months, and to proclaim as open to selection not less than three millions of acres in the proclaimed districts. If more than one person should apply for a lot (limited to 640 acres) the choice was to be determined by auction, at which only applicants for the lot could compete. The minimum price in all cases was £1 per acre. On occupation by selectors of one-fourth of a proclaimed district the remainder was to become a "farmers' common," for the benefit of the occupants of the selected allotments. The principle of auction was to be applied with regard to all lands except those selected.

By not repealing Earl Grey's Orders-in-Council the bill left the tenure by pastoral tenants subject to them, and they might be enforced more or less arbitrarily according to the interpretation put upon them by the government.

The bill was read a second time in the Council in May 1860, and suffered change in committee. The Houses disagreed. It was stated that the ministry would resort to Earl Grey's Orders-in-Council to effect their purposes. Mr. Fellows induced the Council to ask for a conference.

There were dissensions in the Cabinet, and Mr. Service and Mr. Francis resigned. After conferences and concessions the bill was assented to, and Parliament was prorogued.

Though Mr. Nicholson had passed a measure on a subject with which no previous ministry had been able to deal, a plot to oust him was matured during a brief recess, and (26th Nov.) he gave way to Mr. Heales, without having been permitted to produce a promised measure dealing with "the occupation of Crown lands for pastoral purposes."

Mr. J. M. Grant (21st Feb. 1861) became Vice-President at the Land Department under Mr. J. H. Brooke; and in conjunction with Mr. Ireland (Attorney-General) they devised a plan for granting licenses to occupy "agricultural waste lands of the Crown for the purposes of settlement and cultivation." It was pretended that the 68th clause of Nicholson's Land Act justified the scheme; but that clause only contemplated licenses to occupy, for a term not exceeding seven years, sites of inns, stores, bridges, ferries, and other purposes *ejusdem generis*. Although a voluminous defence of the scheme was produced by Mr. Ireland, neither he nor anyone else believed it.

The Houses were in session, and Mr. Fellows carried in the Council a resolution pointing out the illegality and impolicy of the scheme. An address requested the Governor to prevent the issue of licenses until a future Parliament should have "an opportunity of dealing with the question." Sir H. Barkly laid before the Council Mr. Ireland's opinion, and added that "while anxious to defer to the desire" of the Council, he would "not feel justified in interfering with the exercise, by a tribunal (the Board of Land and Works), duly constituted by Act of Parliament, of powers conferred upon it by another Act of Parliament, at the instance of one only of the three branches of which that Parliament consists." The ministry being defeated in the Assembly, the Governor consented to dissolve that body. The majority clogged the grant of supplies with a prohibition of their issue after the 31st August, "unless Parliament be then sitting;" the Governor was advised in proroguing the Houses (3rd July) to declare the limitation "obsolete, yet dangerous," and the ministry appealed to the country to support them in the act by which they claimed to have "settled the lands of the colony." How they returned successful and were overthrown on financial grounds (Nov. 1861) has been told.[25]

The Governor's speech extolled the "occupation and cultivation licenses" "granted by the Board of Land and Works." The Council desired "to see the lands settled upon by those desirous of providing homes for their families," but deemed the method of the ministry a viola-

[25] *Supra*, p. 373.

tion of the principles of responsible government. The Assembly approved of what had been done. The Council entreated (26th Sep.), by 17 votes against 3, that the legality of the licenses might be tested in the Supreme Court. The Governor (1st Oct.) replied that his advisers were "satisfied of their legality."

The manner in which Messrs. Brooke and Grant exercised their functions at the Board of Land and Works was much discussed. The potentiality for bribery which the Crown lands constituted may be gathered from the fact that the "Victorian Year-book" (1878-9) records that on the 31st December 1878 the total quantity of land alienated in the name of the Crown was eleven and a-half millions of acres, most of which was taken up under departmental control, and which might have realized, instead of eighteen millions and three-quarters of pounds sterling, at least three times that sum, and have defrayed the cost of the railways, which at the same date had mainly created the public debt. Land in a populous neighbourhood worth many pounds an acre was, for a nominal fee, awarded to grateful applicants.

When the Heales ministry was ejected Ireland joined its supplanters, and, as Attorney-General for O'Shanassy, was ready to destroy for him the contrivances which, as Attorney-General for another, he had assisted in framing.

In the interval between the passing of the Nicholson Land Bill and the construction of the O'Shanassy ministry, Mr. John Robertson succeeded in New South Wales in passing his Land Bills of 1861. Mr. Duffy resolved to curse Victoria with free selection before survey. Mr. Ireland and his new colleagues endeavoured to guard against a repetition of the deeds of Ireland, Brooke, and Grant. They enacted that only under the new Act (1862) should the Governor have power to convey land. A map delineating the lands of the colony was produced. Ten millions of acres, initialled on a map by Duffy, were to form agricultural areas; four of those millions were to be open for selection before survey "within three months of the passing" of the Act; and at least two millions were always to be similarly open, while so much might remain in the hands of the Crown. Lands proclaimed open for selection might, if unselected, be sold by auction at an upset price of £1. The lawless occupation

promoted by Grant, Brooke, and Ireland was condemned as illegal by the Supreme Court. A new law constituted the occupiers (at their own option) selectors under the new Act, or licensees for the period defined in their spurious licenses. The Act professed to limit the right of selection to 640 acres for any one person. The selector could pay a moiety, or the whole sum due, at once (£1 an acre). The claim of "his heirs or assigns" was made as valid as his own. The pastoral occupation of Crown lands was dealt with, and the rate of rent was prescribed. No pastoral license was in future to be a bar to resumption by the State.

The spirit of Lord Stanley's Land Act of 1842 was retained by enacting that one-fourth of the land revenue should be devoted to assist immigration, but the clause was disobeyed by successive ministries, and was eventually cancelled. Sinuous methods ensured the passage of the bill in the Assembly. A certain class was propitiated by an amendment empowering former purchasers of Crown lands to become selectors to the extent of 320 acres.[26]

The scramble for land at a fraction of the value for which it could be sold by auction was eager. The carcase of Victoria was laid bare for a hungry pack. All the evils rife in New South Wales were intensified by the compactness of Victoria and her larger population. Duffy, the President of the scramble, issued a pamphlet (entitled "Guide to the Land Law") from several printing presses in London and in the colony. He expatiated upon the certainty that "new immigrants would take joyful possession of the independence tendered to them."[27] He sat on the Land Board dispensing favours. Ere long it was discovered that he had ministered to the creation of large estates. Fraudulent selection abounded in the process over which he presided; but, when popular indignation was excited, he

[26] This waste of the public estate was widely availed of. Land jobbers bought up the rights of selection and trafficked in the lands acquired.

[27] He descanted upon "maize" as a useful plant not generally "known—that wonderful cereal which is the prime resource of the settler in the American prairie," &c.; and apparently unconscious that it was in the early colonial days much used by man, and had been the chief support in Australian stables for more than half a century, he proposed to make grants for long periods in order to foster the culture of maize as a "new industry."—"Guide to the Land Law," 1862.

strove to cast the odium upon his colleagues. When he landed in Victoria he boasted that his law-books were his strongest weapons. When fraudulent selectors conveyed thousands of acres to those who had employed them, he averred that he was guiltless of the clause which compelled the government to grant titles in fee to selectors, their "heirs or assigns." He was willing to plead ignorance of the meaning of the word "assigns" rather than acknowledge that failure was attributable to himself. At a later date (1877) he inveighed against the selectors who had assigned their allotments, and declared that his Act had failed "because the very class for whom we legislated sold their inheritance for some paltry bribe." There was a general feeling that it had failed, but while endeavouring to amend it the O'Shanassy ministry gave place in 1863 to the McCulloch Cabinet, which involved the colony in disasters in the time of Governor Darling.

An aidant cause of the fall of O'Shanassy's ministry was their endeavour to destroy the secrecy of the ballot, and at the same time to conceal the fact. They knew that an open attempt to abolish it would fail. Under the existing law returning officers were compelled to send all the papers used at an election, sealed, to the Parliament Houses. After safe custody, during which they might be produced in compliance with the order of a Committee of the House or of a Court, they were at the end of two years to be destroyed, and thus, though they could be consulted for purposes of justice, they could not otherwise be looked at. This guarantee the ministry removed by a clause directing returning officers to arrange the voting papers in numerical order, and deliver them to the Clerk of the Peace in the district, who was to keep them "in like manner in all respects as the records of his office." Both Houses passed the bill without remarking that anyone could claim to see such records, and could trace the votes of electors at leisure by comparing the voter's number on the ballot paper with his number and name on the electoral roll. A few days afterwards O'Shanassy fell, and the incoming ministry carried a measure which restored the secrecy of the ballot, and compelled deputy returning officers to seal, and to allow scrutineers to seal, all packets sent to the principal

returning officer, who was compelled to send, so sealed, all such packets to the Parliament Houses with his own papers similarly secured.[28] It is right to record that in 1863 Mr. O'Shanassy passed two important Acts "to consolidate and amend the laws relating to Municipal Institutions," and to provide for Local Government in Road Districts "and Shires," without the limit of Boroughs. He also passed a Civil Service Act.

McCulloch made Mr. Heales Minister of Lands. When the latter died (in 1864), Mr. Grant, who had been Vice-President under Heales, succeeded to the Presidency. A Land Act (passed in 1865) facilitated free selection beyond the boundary of the areas which had been subjected to it under the Act of 1862. To prevent the practices sanctioned under the Duffy Act, powers of disallowance of applications to select were vested in the government. A clause (42) empowered the Governor to "issue licenses for any period not exceeding one year," which (entitled) holders "to reside on or to cultivate any lands on any goldfield." The license was in no case to extend over more than twenty acres. The manner in which this clause was wrested deserves notice. The license issued by the government demanded "residence on the land during the continuance of the license," or, within four months of its date, enclosure of the land with a proper fence, and cultivation of "at least one-fifth portion." As the licenses were only contemplated at goldfields, it was stipulated that they were to be no bar to searching for gold by miners. The Governor was empowered to resume the land without compensation, and the license was to be forfeited on breach or neglect of its conditions. Grant was Minister of Lands in 1869, and to him Duffy applied. He had a pension from the Queen and wished to form a country-seat. Mr. Grant was compliant. By his aid (March and April 1869) Mr. Duffy became licensee for several allotments, two of which exceeded the lawful limit of 20 acres, and none of which were near a goldfield, although the license issued in the Governor's name described the land as "situate on a gold-

[28] The addition with regard to seals of scrutineers was inserted by the Legislative Council, on the motion of Mr. Highett.

field or adjacent thereto." Conditions of residence and cultivation were nominally imposed. The land was at Sorrento, near Point Nepean, and there never had been a goldfield there, nor was there any adjacent goldfield. When the facts were exposed Duffy could not contend that there had been any such goldfield. It might have appeared difficult to convert a license to occupy (for a term not exceeding twelve months) into a freehold, but the large license with which Mr. Grant had scattered the public lands to obtain popularity emboldened him to expect that at the elections he would be rewarded rather than rebuked for violations of law.

Victorian ministers had long discovered that, by obtaining power to make Regulations for administering an Act, they could do things unsanctioned by the law. Thus the licenses for a year were (by Regulations which violated the Act) made convertible into freeholds on performance of conditions satisfactory to a minister. After some changes Mr. Grant was again Land minister in 1871, under Duffy, who had so often been his assailant, and who had called Mr. W. M. K. Vale a "foul-mouthed ruffian," yet took him to his bosom with Grant.[29] Duffy being the head of the ministry, the accommodating Grant intimated to him the satisfaction of the government with his compliance with the conditions of his license on more than one allotment, and he received grants of land on a spot where it was originally illegal for him to receive a license; where, if it had been legal, only one could have been held; and where the maximum area which could have been lawfully occupied at a goldfield, was exceeded in his favour.

The modes in which laws were mockingly set aside have been best seen by comparing the laws with the practices of various governments. That the laws themselves would lead to demoralization and corruption; that the public estate would be squandered; that wealth would find methods of accumulating land; that the creation of an industrious yeomanry, which all professed a desire to establish,

[29] Each had, like Gay's characters, something to forgive. Mr. Vale had condemned Duffy (two years before) to "everlasting shame and infamy," and declared that the "abominations of the Land Act of 1862 and Mr. Duffy's pension run side by side."

would not be secured by indiscriminate selection; that selectors would often select, merely to traffic in their allotments—was urged during the passage of the various bills, but was urged in vain. In one instance 320 acres selected (at £1 an acre) on account of a spring copious enough to supply water to an extensive tract, were sold by the selector for £10,000, and the profit which ought to have enriched the State went into the pocket of a speculator. One result was speedily attained. Squatting, or tenure of pastoral tracts, was practically extinguished. Affluent settlers converted runs into freeholds; needy settlers saw their runs cut up by selection. Uninviting spots remained in the hands of pastoral tenants, and gradually their area became more and more contracted. The word had gone forth. The odious Orders of Earl Grey, so long denounced, were annihilated. The government destroyed the interests which had been created under them. The selectors, real and spurious, whom Duffy had let loose, spread over the fair lands with the cry—*Hæc mea sunt; veteres migrate coloni.*

Too late it was found that the attempt to grasp too much had brought disaster upon Victoria, while the wisdom of the South Australians, who would not accept Earl Grey's baneful Orders, left their pastoral interest unmolested. Another result ensued. Capitalists carried from Victoria to the spacious interior of the continent the funds which the law precluded them from investing in pastoral pursuits at home.

While indiscriminate selection of unsurveyed lands rendered impracticable the pursuits of the grazier in many places where it would have been better for the community to maintain them, and while by various devices some graziers wrested the law to their own purposes (aided by selectors who took up land only to sell it at a profit), the occupation of the squatter was speedily destroyed except on lands deemed unfit for culture. Other foes assailed him.[30]

[30] The Governor's speech to the Victorian Parliament, 3rd July 1883, said :—"The almost complete abandonment of the large tract of Crown lands known as the 'Mallee country,' calls for immediate legislation with a view to the speedy and thorough re-occupation and reclamation of that territory. A bill to accomplish this will be at once laid before you." To

Rabbits multiplied in millions and aided the government in destroying the squatter. The slaughter of millions of rabbits seemed to have no effect upon their numbers. They were pursued with the zest which had characterized the crusade against squatters, but were not so easily exterminated.[31] The annihilation of the squatting interest may be inferred from the fact that when a pastoral tenant in Victoria found himself unable to pay his former rent of £750 for a run, which was subdivided for selectors and a prey to rabbits, the highest tender received was £10.

A provision of the Duffy Land Act of 1862 deserves remark, inasmuch as it was the theme of high-sounding phrases in his speeches and pamphlet. Under Mr. Duffy new arts were to spring up, and the culture of centuries in Europe was to be rivalled at a bound in Victoria.

"When any person desires to make vineyards or oliveyards, or mulberry or hop plantations, or permanently to establish in Victoria any useful plant or industrial enterprise or process which was previously unknown or not generally known and used therein . . . the Governor may grant to such person a lease . . . not exceeding thirty acres for any term not exceeding thirty years . . . but not more than one hundred leases shall be issued in one year . . ." (Sec. 47.)

At any time after five years from the commencement of the lease a favoured lessee might by paying £1 an acre convert his nominal leasehold into freehold. The opportunities for favouritism and waste which such a clause afforded were plain. It was derisively styled the "novel industries clause," whenever in some choice spot thirty acres were leased to promote an industry which had existed in the colony for a quarter of a century. The result was ludicrous. One person obtained a lease in order to make a vineyard near a railway, about twenty miles from Melbourne. He escaped competition, which might have raised the price of the land by some scores of pounds, but the making of the vineyard cost thousands, and even his friends wondered at his petitioning for so costly a favour.

the surprise of old and new colonists it was afterwards found that the Mallee country was capable of producing wheat, and special legislation was resorted to in order to encourage cultivation.

[31] In 1892 the export of rabbit skins from Victoria exceeded 7,500,000. The New South Wales statistician reported that the "expenditure on rabbit destruction in that colony up to the end of 1891 amounted to £858,000, of which £344,000 came from assessment."

Close to the heart of Melbourne preposterous acts were done. On the north bank of the Yarra River land in leading thoroughfares of Melbourne had been sold for hundreds of pounds sterling per foot of frontage. Large warehouses lined the street abutting nearest to the river. On the south bank the land was low; and, in default of the adoption of any plan for regulating flood waters, the government had not alienated allotments there. Annual licenses had long been granted at nominal rents or fees, but they were easily revocable, and were granted chiefly to enable offensive occupations to be carried on without annoyance, or for a ferryman or boatman's convenience. But impunity breeds boldness. Leases for seven and even for twenty-one years were granted by various ministries, including that of Duffy in 1871.[32] In 1872 it was pointed out that many acres had been leased on the borders of the river, close to the metropolis, and on the road leading to populous suburbs. Storing merchandise, coachbuilding, coopering, and dozens of kindred occupations daily carried on in Melbourne figured in a return which was presented to Parliament in 1872 to explain in what manner the public land had been dealt with under the plea of cherishing "novel industries."

Out of 103,844 selectors, returns showed in 1881 that 30,200 remained on their selections. More than 73,000 had parted with the holdings which were given them that they might remain on them as a prosperous yeomanry. Changes in the law were occasionally made, and in 1890 the land laws were consolidated; but free selection, in such a manner that the selector could not be called upon to pay more than twenty shillings an acre without interest, was maintained. These arrangements being deemed inadequate to relieve the State of its property, a "Settlement of Lands Act" was passed in 1893 to provide for village communities,

[32] Before a Select Committee in 1872 the Assistant-Surveyor-General declared that the Minister of Lands "very often" gave verbal instructions of which no record was kept, but which the permanent officials obeyed; that the Board of Lands and Works was to a certain extent a fiction, inasmuch as the minister could dispense with its advice, and sell by auction or selection as he might think fit; could cancel proclamations of forest reserves, and subject them to selection by an Order of the Governor-in-Council; and that there was "no actual power" which could check him.

homestead associations, and labour colonies.[33] The last-named were prompted by genuine charity, for which Victoria was always conspicuous. The former must be included in the category of efforts to squander, at an insufficient price, the endowment of the State.

The small area and comparatively dense population of Victoria, coupled with her peculiar administration, subjected her Crown lands to an immediate scramble. In addition to the frauds of collusive selections, there were losses to the State. In 1880 selectors were about £400,000 in arrear in payments to the Treasury. Many of them besought the government to relieve them by advances or loans. They were told by a minister that the only remedy he could devise was to abstract from the Railway Fund £2,200,000 which it had received under the Land Act of 1869, and by means of it to "assist the selectors to remain on the land." Thus, after squandering the public estate for a fraction of its value, the colony would see its Treasury emptied to endow the least industrious; while the more industrious cultivators, who had regularly paid their rents or acquired their freeholds, would be taxed to support the idle or unsuccessful.

A "leasing system" seemed to some the only mode of escape from inability to sell land at a sufficient price to benefit the State. Others reflected sadly that Gibbon Wakefield's system, or auction, would have been better than the scramble under which enormous areas of the colony had been alienated without consideration of their value. The spirit of Wakefield might have sat in the clouds and mocked the fools who had taken no warning from his prophecies.

National irrigation works were authorized in Victoria in 1883, and the waters of rivers were sought to be availed of at great cost. An irrigation colony[34] was founded in 1887

[33] A financial crisis in 1893, and a lack of employment, stirred the government to the establishment of a labour colony to relieve those willing to work. The wages of workmen were either paid, as earned, to the labourer's family in Melbourne, or to himself on leaving the establishment.

[34] A similar colony was founded in South Australia. A quarter of a million of acres were put under lease to the Chaffey Bros. at Renmark, on the Murray River, and it was reported that in 1895 from three to four thousand acres were under cultivation.

at Mildura, on the Murray River, by arrangements made by the government with Messrs. Chaffey Brothers. Fruits of many kinds grew in profusion, and were preserved with success. Ten thousand acres were under cultivation in 1895, but financial difficulties became overwhelming in 1896, and the promoting company was declared to be insolvent. Soil, climate, and propinquity of water were at hand, but the capital required to make them work together had not been secured.

The politics of Victoria have engrossed so much space that the state of the colony has been incidentally described. It was blest with such natural advantages that it was difficult to retard material progress by misgovernment. Much was done to cramp commerce and to create discord. But the resiliency of a youthful people and the natural kindliness of the people asserted themselves. Visitors wondered at the signs of prosperity which they saw at an Exhibition in Melbourne in 1880. There had been local and Intercolonial Exhibitions before.[35] In 1880, on a reserve for public recreation set apart by Mr. Latrobe, a building was erected, and the Exhibition was opened (1st Oct. 1880) by the Marquis of Normanby, in presence of other Governors, his guests. From every European State, from Turkey, India, China, Japan, and America, articles 32,000 in number were poured in, and it was recorded that the net cost of the Exhibition was £250,500.

The facility of borrowing money in England to construct railways was largely availed of, at first with circumspection as to probable remuneration from traffic, afterwards with less calculation. Each district marshalled its forces to obtain lines. Ministerial necessities encouraged the demand. Loans afforded the supply. It was accepted by all that railways could only be constructed by means of loans, and every hamlet put forward a demand for its branch line. It was difficult to satisfy all, but vigorous efforts were made to win political support. This was the consideration, and this the necessity. With unconscious

[35] In New South Wales in 1854; Melbourne, 1854; Queensland, 1861; Victoria, 1861; New Zealand, 1865; Victoria, 1866; New South Wales, 1870; Victoria, 1872; New South Wales, 1873 and 1875; Queensland, 1876; New South Wales, 1879.

irony as regarded the manner in which free selection had placed nominal farmers in remote places, it was argued that, as the State had permitted such selection, it was bound to make railways to carry away the produce, whether it might or might not be carried at a loss to the State. To escape from political influence in the Railway Department, a competent manager was procured from England. After a time political influence ostracized him, and, the annual loss to the State being great, another competent manager was, in 1896, obtained from Queensland, where he had successfully controlled the government lines.

Under such conditions the public debt grew, while the public estate was diminished. Expensive school-houses studded town and country. In all vicissitudes the people of Victoria have been profuse in charity, both in public grants and private gifts. In 1892 there were 42 general and 32 special hospitals in the colony. The receipts at that date were £386,563, of which the government gave £234,231.

Queensland, the northern neighbour of New South Wales, was launched into existence as a separate colony in the end of 1859. There was correspondence about accounts, but the Imperial Government and that of New South Wales adjusted them equitably. The first Assembly elected in Queensland recorded, in an address to the Queen, its "heartfelt gratitude for the great attention and impartial justice" which had been displayed. The Queen had, by Order-in-Council, empowered the Governor-General in Sydney to make provision for convoking the first Legislature in Queensland; and the qualification of electors and members was the same as that fixed by the Constitution Act of New South Wales of 1855.

The population was supposed to consist of 10,494[36] male whites, and 12,000 aborigines. The estimated revenue was £160,600. On arrival at his post, Governor Bowen appointed Mr. R. W. G. Herbert to be Colonial Secretary. Mr. Herbert, who had been private secretary to Mr. Gladstone, presided over the Queensland ministry until 1866. The Order-in-Council creating the colony had, in keeping

[36] This estimate was placed before the Queensland Parliament in 1860. In 1860 11,000 had been added to it.

with the Statute under which it was promulgated, set apart £1000 (out of a Civil List of £6400) for public worship; but it was left to the local Legislature to deal with the question. Mr. Herbert carried the abolition of the provision by 14 votes against 9 in the Assembly, which consisted of twenty-six members. The members of the ministry, three in number, sufficed to turn the scale, and to pass the bill, which the Council, consisting of fifteen members, agreed to without demur. A larger sum than had thus been saved was appropriated to increase the salary of the Governor.

Dr. Lang had, in 1847, sent emigrants to Moreton Bay under false pretences. He had received land orders after obtaining money from emigrants, and the latter "found on arrival in the colony that the promises of the said John Dunmore Lang were of no avail, and that no land was forthcoming."[37] He had been warned of the impropriety of his proceedings, and the Sydney Legislature had condemned them. Nevertheless he asked for compensation, and appeared before a committee in Brisbane in 1860. Some of his victims presented a counter-petition. The committee reported that his scheme of immigration was "a commercial and strictly sectarian effort," unworthy of compensation, but that his exertions to bring about separation from New South Wales deserved thanks (which he received with discontent).

At an early date Sir G. Bowen and his advisers dispensed with law. They directed the Custom House officers to abstain from collecting the export duty on gold, which those officers were bound to collect; and they passed an Act (1860) to indemnify the Custom House officers for complying with the Governor's command to disobey the law. They repealed the export duty on gold in the Indemnity Act. Experience made them repentant, and in 1864 they imposed an export duty of 1s. 6d. an ounce upon gold.

In 1865 they resorted to increased import duties. In 1866 they augmented them again, having previously in much commotion issued (Aug. 1866) Treasury Bills. In

[37] Petition of the Immigrants. Queensland Parliamentary Papers. 1860.

October they levied Stamp Duties, and authorized the issue of bills or notes payable in specie on demand. In 1872 the gold export royalty was reduced to 1s. an ounce. Eventually it was abandoned.

The manner in which the suffrage was dealt with revealed the absence of popular pressure, or proved that some circumspection prevailed. The qualification of electors was left until 1872 practically the same as it had been defined in 1853 by the Legislature in Sydney.

A freehold of a clear value of £100.
Household occupation of premises of the clear annual value of £10.
A leasehold tenure based on a similar annual value.
A depasturing license under the Crown.
An annual salary of £100.
An occupant paying as much as £40 a year for board and lodging.
A lodger paying £10 a year for lodging only.

Such were the qualifications in Queensland, as they had been in New South Wales. An Act of 1867 virtually continued the existing system, while increasing the number of the Assembly to 32. But in 1872 Queensland followed in the wake of her neighbours. By an Act, 31 Victoria, No. 5, all persons 21 years of age, except those specially disqualified or incapacitated, were entitled to be enrolled after six months' residence in a district. No care was taken to provide that a voter should he capable of reading or writing. Various property qualifications—household, leasehold, tenure of a license to depasture on Crown lands, and ownership of freehold—were retained; but a voter had only one vote in one district. Hitherto the Upper House has remained a nominated body. Its members hold their seats for life, and are unpaid. Members of the Assembly receive payment.

The ministry which lowered the suffrage for the Assembly feared loss of support in case of refusal. It had previously abolished the provision which required a majority of two-thirds in each House in altering the Constitution. The provision originally descended to Queensland by virtue of the Constitution Act of New South Wales; but in 1867, under the ministry of Mr. (afterwards Sir) R. R. Mackenzie, the clause was re-enacted in a local Constitution Bill. Mr. A. H. Palmer (Colonial Secretary under Mackenzie in 1867) became head of a ministry which (in 1871 and 1872)

abolished the clause respecting constitutional changes, and widened the suffrage.

The first Queensland Parliament evinced zeal for public education and provided for the establishment of Grammar Schools. Ere long the dangerous fallacy was adopted that the State ought, by making education free, to relieve affluent parents of their responsibilities. There remained, in 1875, fifty-four private schools, whither independent parents sent about 2000 children at their own charge. In 1876 the existing Board of Education was superseded by the establishment of a Department of Public Instruction under a Minister of Education. The system was free, or eleemosynary, but was not aggressive against religion, since it allowed religious instruction to be given in the schools, at other than the ordinary school-hours, by ministers or others acting for parents of scholars. In 1894 there were about 700 primary schools, with an average attendance of 45,004 scholars, and at the same time there were 168 private schools with an average attendance of 9402 pupils. Ten grammar schools also had been provided for under the law.

Sir G. Bowen never exercised the powers wielded by Governors before the era of responsible government. His first ministry, under Mr. Herbert, lived longer than was usual in Australia. But Mr. Herbert was the only member who remained in it throughout. There were three successive Attorneys-General, the same number of Treasurers, and two Ministers for Lands. Only the three offices thus held and Mr. Herbert's were joined with responsibility. The Secretary for Lands and Works was not appointed until two years after the inauguration of the government. The local Treasury was poorly furnished when Sir G. Bowen assumed office, and the wants of a young country, with the inexperience of a new Legislature prone to expenditure without counting cost, reduced the government to difficulty. Mr. Herbert retired in February 1866; and Mr. Macalister, who had been his Secretary for Lands and Works, formed a ministry which included as Attorney-General, Treasurer, and Secretary gentlemen who had been at different times members of the Herbert ministry. The Prime Minister (Secretary for Lands and Works) proposed to meet financial

difficulty by issuing inconvertible paper currency, made a legal tender by law, to the extent of £200,000. The expenditure at the date (1886) was £594,000; the revenue, £490,000. The imports for three years had been nearly double the exports.[38] The novelty of the ministerial scheme, and the fact that Royal Instructions required reservation for Her Majesty's pleasure of bills affecting the currency, caused the Governor to withhold his approval. He suggested the issue of Treasury Bills and an increase of taxation. The ministry tendered their resignations, which were not accepted. The Governor offered to permit the introduction of their measure, reserving his decision until he could obtain instructions from England. The ministry, requesting him to lay the facts before the Houses, resigned. Mr. Herbert was called in, and having constructed a ministry containing only one of his former colleagues, passed a bill authorizing the issue of Treasury Bills for £300,000. The Governor assented to it, and the triumphant but then unpopular Herbert retired after holding office for eighteen days. Mr. Macalister returned to office with two of Mr. Herbert's recent colleagues, and two of his own. Certain persons petitioned for the recall of the Governor on the ground that he had unconstitutionally brought about a ministerial change. But Lord Carnarvon approved of his proceedings, and he was translated to New Zealand in 1867. The crisis was long remembered in Queensland. Mr. Herbert's colonial career terminated with his brief campaign of 1866. In 1868 he became Assistant-Secretary to the Board of Trade; in 1870 Assistant-Under-Secretary to the Colonial Office; and in 1871, as permanent Under-Secretary, filled the chair which Sir James Stephen, Herman Merivale, and Lord Blachford had adorned.

Major Blackall died after governing for two years, and was succeeded by the Marquis of Normanby, who was called upon to deal with a difficulty in the Assembly. The Acting-Governor had recently granted a dissolution when the ministry had a majority of only one. In the new House Mr. A. H. Palmer, Prime Minister, commanded a majority. But there had been acrimonious public meetings,

[38] In 1866 the figures were—Imports, £2,467,907 Exports, £1,366,491
,, 1893 ,, ,, ,, 4,352,783 ,, 9,080,599

and Brisbane and Ipswich had returned Opposition members. The minority, hoping for popularity out-of-doors, abused the forms of Parliament, and refused to grant supplies unless the government would proceed with a bill to change the electoral distribution. They would vote two months' supplies on that condition. Mr. Palmer would have the ordinary supply or none. Business was arrested. The minority presented a memorial to the Governor. They cast imputations upon the government, and demanded redress of electoral grievances. The Governor, "ready to uphold to the utmost the dignity and privileges of Parliament," and respect the right of the people to direct, through their representatives, the course of legislation, pointed out that the "right of the representatives" appertained "to them not in their individual, but in their collective capacity," and he declined "to accept the opinion of twelve members as the decision of a House of thirty-two members."

"It appears to me that your memorial has been founded on a total misapprehension of the principles of the British Constitution, upon which the Constitution of this colony has been founded. Neither in this colony, nor in England, nor, as far as I am aware, in any British colony, does the Constitution give an inherent right to any man to participate in the election of the representatives of the country. The franchise is regulated in each instance by Act of Parliament, and whether the law is good or bad, so long as that law continues unrepealed it is binding on all. . . . The Opposition, when pressing their claims so strongly, must remember that others have claim to consideration besides themselves. I shall always be ready to pay the greatest deference to the opinion of Parliament, but that opinion must be expressed by the majority of the Assembly in their legislative capacity, and not by a minority without the walls of the Assembly."

The firmness of the Governor probably conduced to the settlement made, and when he was summoned (1874) to the government of New Zealand he left a reputation in Queensland which an ambitious man might envy, but which he could not be accused of having sought in any other manner than by doing his duty.

Mr. (afterwards Sir) W. W. Cairns governed for a brief period, and was called upon (1876) to decide whether a bill involved a breach of international duty. The Chinese were attracted in large numbers to the goldfields, and to deter or expel them the bill exacted from them six times as much for a miner's license as was demanded from others. The Governor obtained a special report from Mr. S. W. Griffith,

the Attorney-General, who thought it unnecessary to reserve the bill for the Queen's pleasure. But Sir W. Cairns remembered that there was an existing treaty with China. When he informed the ministry that he would reserve the bill they remonstrated. To go beyond his "instructions, or to allow the unusual character of proposed legislation, not forbidden by them, as a sufficient ground for not giving immediate effect to the wish of the Legislature, would be of serious consequence to the independence and freedom of Parliament." The Governor nevertheless reserved the bill. The Secretary of State declined to recommend its allowance, but suggested amendments which would remove defects. Lord Carnarvon rested his approval of the Governor's conduct on the necessity, under his instructions, to reserve the bill. He was willing to co-operate with the local Legislature nevertheless in dealing with the difficult question before it. Meanwhile the Queensland minister invited the Australasian colonies to aid him in asserting rights of self-government and discarding considerations about treaties. Mr. Parkes, in Sydney, could not see in Lord Carnarvon's despatch any hostility to the

"constitutional rights of Queensland. Being integral parts of the Empire, the colonies must clearly be subject to the obligations of the Empire; and it is no more than the duty of the Imperial authorities to guard against local acts of legislation conflicting with the honour of the Crown. In the present case there does not appear to be any just ground for anticipating that Her Majesty will be finally advised to withhold assent from any measure for the protection of the people of Queensland which respects Imperial obligations, and does not exceed the necessities of the case."

This timely advice had weight; and the Sydney Assembly supported the just claims of Queensland by urging that the Imperial Government might obtain such a modification of the Tien Tsin Treaty as would regulate Chinese immigration. The Queensland government passed Acts in 1877 and 1878 to the satisfaction of all but the Chinese, who had to pay a poll-tax of £10 on arrival by land or sea. Governor Cairns did not remain long in the colony. In 1877 he became Governor of South Australia.

The question of Chinese immigration was not finally set at rest by the Acts of 1877 and 1878. It was discussed in conference in 1881 in Sydney, and with the exception of Western Australia, the other colonies adopted substantially

the law of Queensland. In 1888 the arrival of Chinese immigrants in several ships excited the people and the governments in New South Wales and Victoria.

Ships arriving in Victoria were not allowed to land Chinese immigrants, and in Sydney ships were similarly treated. Parkes, in office, though then engaged in unfinished correspondence on the question with the Colonial Office, prevented the landing of Chinese in Sydney, and passed a Chinese Restriction Bill, which, to use his own words, "virtually prohibited the landing of Chinese."

While the bill was before the Assembly, an excited mob, headed by the mayor, crowded upon the Parliament building. Parkes declined to address the crowd, but in response to the mayor, wrote that none of the Chinese would be allowed to land; and the mob, having gained their object, went away.

Afterwards, in an "Introduction" to his printed speech, Parkes contended that it was "something like insolence to accuse the government of acting from panic, and of pandering to the multitude." It must be confessed, however, that his words about England were more menacing than those about the mob. "Neither for H.M.'s ships of war, nor for H.M.'s representatives, nor for the Secretary of State, do we intend to turn aside from our purpose, which is to terminate the landing of the Chinese on these shores for ever. . . ."[39]

Sir Arthur Kennedy, who succeeded to the government of Queensland in 1877, kept aloof from party discussions, which were sometimes bitter.

During his rule a proposal to annex New Guinea to Queensland acquired shape. At various times annexation

[39] The number of Chinese in the Australasian colonies in 1891 was in:—

	Male.	Female.	Total.
New South Wales	13,555	601	14,156
Victoria	8,772	605	9,377
Queensland	8,527	47	8,574
South Australia	3,926	71	3,997
Western Australia	912	5	917
Tasmania	993	63	1,056
New Zealand	4,426	18	4,444
	41,111	1,410	42,521

to the Empire had been previously mooted, and an inquiry by Lord Carnarvon—whether the principal colonies would contribute not more than £4000 a year (each)—elicited nothing but discussion. Missionaries were settled at various points in New Guinea, and there was correspondence as to the necessity for establishing some authority to restrain outrages by Europeans "on natives of islands beyond the Queensland limits."[40]

Again the Colonial Office was urged to annex the eastern portion of New Guinea, and (Nov. 1878) moved by rumours that gold had been discovered there, and that lawful authority would be needed, Sir Arthur Gordon, the High Commissioner in the Pacific, arrived at the conclusion that annexation would be inevitable in order to avert "a reign of lawless violence and anarchy." In the end of 1878 the seekers for gold returned unsuccessful to Australia. Again in 1882 the subject of annexation was revived, in consequence of rumours that the French and the Germans were about to intervene there, but the Earl of Derby announced that the government were "not prepared at present to reopen" the question. In February 1883 the Queensland Agent-General in London (by letter) urged immediate annexation, and Lord Derby (8th March) called for a report from Sir A. Kennedy "before so grave a step could be considered." Before his invitation was received a commercial telegram announced that the Queensland government had (4th April) taken formal possession of New Guinea for Her Majesty, and Sir A. Kennedy telegraphed (16th April):—"To prevent foreign powers from taking possession of New Guinea, Queensland government, through Police Magistrate, Thursday Island, took formal possession in Her Majesty's name on 4th instant, pending your decision on my despatch this mail."

In the neighbouring colonies approval was expressed in various forms.[41]

[40] Despatch. Sir A. Kennedy to Her Majesty's High Commissioner for the Western Pacific, 19th December, 1877.

[41] The Queensland government telegraphed (21st April):—"All colonies heartily endorse our action, and are urging approval. Consider annexation by foreign power calamitous. Assure Lord Derby no expense Imperial Exchequer. Press early ratification." Lord Derby was blamed for writing that there was no known desire of any foreign nation to annex

In the first instance Lord Derby declined to ratify the annexation, but coupled his refusal with a hope that

"the time is now not distant when in respect of such questions, if not for other purposes of government, the Australasian colonies will effectively combine together and provide the cost of carrying out any policy which, after mature consideration, they may unite in recommending, and which Her Majesty's Government may think it right and expedient to adopt."

Public feeling in the colonies was too sensitive to be soothed into apathy. Lord Derby's hesitation stirred all men's minds in Australia; and Parliaments spoke in accordance with popular feeling.[42]

Eventually New Guinea was apportioned to Holland, England and Germany. The British colony, embracing 90,000 square miles, was placed under an Administrator and a Council; and New South Wales, Victoria, and Queensland agreed to contribute (each) £5000 to the cost of the government, having a voice in the control.

Sir W. McGregor, the Administrator, had the rare felicity of winning admiration from the Colonial Office, from every colony with which he was brought into contact, and from the missionaries whom he found labouring among the natives.

His white subjects were three hundred in number in 1894, but the natives were numerous, and in keeping order among them he availed himself of a few score of their fellow-tribesmen, whom he enrolled as policemen.

With regard to the New Hebrides, England and France mutually agreed to act benevolently to the natives, and to respect each other's abstinence from setting up dominion. Hitherto no discord has interrupted the quasi-condominium,

a portion of New Guinea. It appeared afterwards that Earl Granville (Foreign Secretary) was in correspondence with the German Government at the time; but it did not appear that he advised Lord Derby of the fact.

[42] Both Houses in Victoria, at the instigation of Mr. Service, resolved, in July, 1883, that "it is essential to the future well-being of the Australasian colonies that New Guinea and the Pacific Islands between New Guinea and Fiji, including the New Hebrides, should be annexed to the British Crown, or that England should establish a Protectorate over them;" that concerted action on the part of the colonies was desirable to accomplish such a result; and that Victoria was "willing to contribute its proportion of the expense entailed by such annexation or Protectorate."

although individual grumblers have urged both the English and French governments to throw aside their supineness.

Sir Arthur Kennedy, under whose government the question of annexing New Guinea was brought to a crisis in 1883, retired soon afterwards, and was succeeded by Sir Anthony Musgrave. Sir H. W. Norman followed Sir A. Musgrave in 1889, and after a successful term of office gave way to Lord Lamington in 1896.

The problem of dealing with Crown lands in Queensland was not encumbered with the difficulties existing in Victoria or in New South Wales. Cupidity of many thousands scrambling for prizes in a lottery where the allotments were to be carved out of a small territory could find no counterpart in Queensland, where at the date of separation (1st Dec. 1859) the male white population, including children, was 10,494, and the area of the colony was about 670,000 square miles. Her scanty population was her safeguard in her callow days.

They owned or controlled more than three millions of sheep and nearly half-a-million of cattle. It was difficult to raise a storm against the pastoral interest, which formed the life-blood of the settlement, and ministered to almost all employment both in town and country. But in proportion as the circumstances of Queensland exempted her from danger by indiscriminate selection of lands which the selector had no intention to cultivate, it was safe for her to offer facilities for selection which her population was not numerous enough to abuse. In 1860 she encouraged settlement of an agricultural class.[43] Farmers were tempted by a privilege of lease of adjacent land at a nominal rent, and the principle of auction was departed from on agricultural reserves in order to extend farming operations. The unassisted immigrant was invited by the offer of grants of land of the value of the cost of his immigration.

Ere long the Legislature travelled on the downward road, which led the province of Auckland into such humiliating contrast with Canterbury in New Zealand. In 1868 the price of "agricultural land," with deferred

[43] An "Occupied Crown Lands Leasing Bill," and an "Unoccupied Crown Lands Occupation Bill."

payments, was lowered. Injurious tendencies of the law were heightened by its abuse. Collusive selections enabled speculators to grasp larger blocks than the spirit of the law allowed. Combinations by members of a family gathered into one hand thousands of acres in coveted districts. Those who had taken part in the lotteries of New South Wales and Victoria carried their experience to new pastures in order to overreach the authorities in Queensland. All Crown lands were not open to selection; and survey wisely preceded selection. But the surveys were on a large scale. In 1876 there were upwards of 29,000,000 acres subject to conditional selection, besides 597,000 acres open under a Homesteads Areas Act, which was deemed necessary, in 1872, to meet the wants of genuine selectors anxious to make homes.

The Homesteads Act was itself abused by those who selected under it with an intention to sell the land to a richer neighbour. Statutes in 1884, 1886, 1889, and 1891, attest the diligence with which the Legislature endeavoured to adapt its land laws to apparent exigencies. Land Orders of £20 for each person of twelve years and upwards, and £10 for persons under twelve years, were made available for immigrants who paid for their own passages. In 1893 it was estimated that eleven and a-half millions of acres had been alienated in fee simple, and that about sixteen millions were in process of alienation.

There were certain industries for which Queensland was better adapted than the southern colonies, and her first Parliament encouraged them by offering a bonus to the successful cultivator of sugar and cotton. But the inexorable law of cost of production militated against the profitable growth of the latter. It is in the long run useless to sell anything at a loss. In 1870 there were 14,000 acres under cultivation of cotton, and the crop was heavy, but prices were unremunerative. In 1876 there were only 573 acres under cotton cultivation. In 1878 there were only 37.

But sugar cultivation yielded prosperous results. In 1891 the value of the cane grown in Queensland was stated to be £281,700. Polynesian islanders were largely employed in the cultivations, as they were in various industries. For a time large plantations were promoted,

but they caused heavy losses to the proprietors. Subsequently, small plantations and large central mills were resorted to, with the result that some return was yielded to the enterprise of the promoters, and cultivators were prosperously settled upon the soil.

The statistical tables in this volume render it unnecessary to encumber the text with details.

In South Australia the spirit which resisted Governor Robe's measure for granting aid to religious bodies, abrogated that provision as soon as political institutions enabled it to do so.

The munificence of Lady (then Miss) Burdett-Coutts, for which Europe was too narrow, endowed the Church of England in Adelaide, Cape Town, and British Columbia, with bishopric funds, amounting in the aggregate to nearly £50,000.

The Church of England formed a "Collegiate School of St. Peter's," founded by Bishop Short in 1849, and a "Pulteney Street School," with 400 scholars, who received commercial and classical education. The Wesleyans founded a "Prince Alfred College," of which Prince Alfred laid the foundation-stone in 1867, and in which there were in 1881 more than 327 scholars. The Presbyterians, Congregationalists, and others formed a "Union College," in which scholars were trained for the University.

Though legislation was infrequent with regard to education the subject was often discussed. An Act was passed in 1851 to assist in giving "good secular instruction, based on the Christian religion, but apart from all theological and controversial differences on discipline and doctrine." The Scriptures were read daily in the schools, but no denominational teaching was given during school-hours. A Central Board of Education presided in Adelaide, and District Councils acted as District Boards. Teachers were licensed, and received salaries supplemented by fees which could not exceed one shilling a week for a scholar. The parents' contributions nearly balanced the amount of salaries. The government contributed one moiety of the cost of school-buildings, the ratepayers the other. The government paid fees (sixpence a week) for destitute children and orphans. A healthy spirit of co-operation

was manifest. But it was deemed that too large a proportion of the public grant was expended in populous places where private enterprise could find best remuneration, and that more ought to be done to aid sparsely-inhabited districts. Two Select Committees reported. One, in 1868, found that "a large number of children between five and fourteen years of age did not attend any schools." Secularists urged a Committee to ostracize religious teaching, but the Committee, "prepared to go with the most enthusiastic advocates of purely secular education" in securing it, would "never give consent to any legislative enactment against the reading of the Bible in common schools." There were some schools in which earnest teachers forfeited a grant from the State rather than refuse to mingle religious instruction with their ordinary teaching. In 1875 the Parliament passed an Act which subjected the schools to a Council of Education directly responsible to a Minister of Education. Teachers' salaries were augmented. Grants of land were to be set apart every year, and the rents were to be devoted to school purposes.[44] A first endowment of 100,000 acres was provided for in the Act. The Bible might be read, without note or explanation in the schools, before the commencement of the four hours and a-half allotted for secular instruction. Ordinary attendance during those hours was compulsory until the attainment of a standard prescribed by the Council. Children whose parents could prove inability to pay were to receive gratuitous instruction; but fees could be enforced in other cases. They were small in amount (4d. a week for children under eight years, and 6d. for others), but they yielded nearly £17,000 in 1878. The local historian summed up the Act thus: "Education is secular, but not to the exclusion of the Bible; free to those who cannot afford to pay a small fee; and compulsory wherever practicable."[45] In 1878 the colony extended the functions of the Minister, who reported, in 1881, a steady increase in attendance of scholars, and satisfactory results as to pay-

[44] The grants were not defined otherwise than by a provision in the law that they were not to exceed 20,000 acres in any year.

[45] "South Australia." William Harcus. 1876. Published by Authority of the Government.

ment of school fees and the operation of the compulsory clauses. At that date the total area of land granted to the department was 201,463 acres. The money given by the State was £86,000; the total number of pupils was 40,578 (3827 being in provisional schools). In December 1894 there were 609 primary schools, with an average attendance of 37,886 children. The spurious liberality which by the bribe of free education saps the independence of parents by making them receivers of alms crept into the statute book of the colony, and in 1892 education had become "compulsory, secular, and free." "Four hours and a-half are devoted to secular instruction, but the Bible is read before school hours if the parents desire it."[46] Moreover, though no fees were paid for instruction until the compulsory standard was attained, a fee of 1s. a week was demanded for teaching which went beyond that standard.

The foundation of the Adelaide University was due to private liberality. Mr. W. W. Hughes, offering £20,000, agreed to found two Chairs in a University. An Association was formed. An Act of Incorporation was passed in 1874; 50,000 acres of land were granted as an endowment, a site for a building in Adelaide was given, and annual aid from the revenue (with a maximum limit) was guaranteed in proportion to the revenue otherwise derived. A Council of twenty members was created, and the voluntary Association resigned its trust to the new authority in 1874. The munificence of Mr. Hughes was emulated by Mr. (afterwards Sir) Thomas Elder, the patron of exploration. He presented £20,000 to the University as soon as it was established. The first Chancellor was Chief Justice Sir R. D. Hanson; and a Vice-Chancellor was found in Dr. Short,[47] Bishop of Adelaide, to whom the Church of England and the colony had been indebted for the good services of St. Peter's Collegiate School during a quarter of a century. The first degree earned in the new University

[46] "Australian Handbook, 1896," p. 329.

[47] In 1881 the Bishop, amidst testimonials of affection from members of all denominations, resigned his see, at an advanced age. The *Adelaide Observer* stated that a public address was presented to him (1882), before as "large and representative a gathering of citizens" as had been seen.

was conferred in 1879—a staff of Professors having been procured from the mother country.

When Sir Richard G. MacDonnell had presided at the introduction of responsible government, he retained in his new circle of duties the respect and affection of the colonists; his departure was universally regretted. It was during his government that the two Chambers disagreed as to their rights with regard to money bills. He was not dragged into the discussion.

The urbanity of Sir Dominic Daly, who succeeded Sir R. MacDonnell, won golden opinions, and his death at the close of the customary term of government elicited such earnest feeling as to prove the hold he had gained upon the people by his genuine sympathy with their interests.

In 1868 Sir James Fergusson, a soldier of Alma and Inkerman, a Scotch county member, succeeded Sir D. Daly. He also interested himself in local affairs and encouraged high aims.

Sir Anthony Musgrave, after governing at St. Nevis, St. Vincent, Newfoundland, British Columbia, and Natal, assumed office in Adelaide in 1873. He had been there only four years when he was translated to the Western hemisphere as Governor of Jamaica in 1877. The distinguished engineer, Sir W. F. D. Jervois, was in that year engaged in examining the position of the Australian colonies as to defence, and whilst performing that duty was appointed Governor of South Australia.

In 1883 Sir W. C. F. Robinson left Western Australia and became Governor of South Australia, when Sir. W. Jervois was translated to New Zealand. The Earl of Kintore became Governor in 1889 and was succeeded in 1895 by Sir Thomas Fowell Buxton. One far-reaching result from the appointment of Peers as Governors may not have been contemplated originally, yet cannot fail to be beneficial. There is constantly in the House of Lords a number of members versed in the affairs of the colonists and interested in their welfare.

After their successful resistance to Earl Grey's land orders, the South Australians maintained sale by auction and preserved harmony, under regulations which facilitated the occupation of land by pastoral tenants, but enabled

the Crown to resume at six months' notice any land required for sale. But the deeds of her neighbours compelled her to modify her regulations. Sir Arthur Blyth read a paper (1880) to the Royal Colonial Institute, which admitted the fact. He was then Agent-General for South Australia, and had been a member of several administrations in the colony during the years ranging from 1857 to 1876. Alluding to the land systems of Victoria and New South Wales, he said:—

> "It will be readily understood than when this course of action was entered upon in the central colony of Victoria, it would soon be a necessity for adjoining provinces to follow more or less in the same direction, and regulate their enactments for agricultural settlement somewhat upon the same principles. . . . South Australia held out the longest against the new system. . . ."

Thus the lands of the Australian continent, handed over by the mother country, were dissipated by experiments in which one colony sacrificed its own welfare, and cheapened its wares to destroy the business of its neighbours.

But though driven by her neighbours to alter her land laws, South Australia never made her Land Office a mart for the purchase of political support. From that stain her public men were free. For some time the government adhered to the old law, which expended a moiety of the land fund in promoting immigration, and constructing roads and bridges.

It was not until country land was unsold by "auction for choice," and after two years of liability to such auction, that it could be sold unconditionally, and then the price was £1 an acre. For a time the maximum to be selected was limited to 640, but subsequently it was enlarged to 1000 acres. Town and suburban lands were sold by ordinary auction for cash. With these precautions South Australia succeeded in placing general cultivators upon the soil under the system of deferred payments. Whenever and wherever it was deemed expedient to bring more land within reach of the farmer, the government gave notice to the pastoral tenant or tenants, and the required lands were resumed. The preference of residents, both at the preliminary auction and in the acquisition of title, ensured, so far as legislation could ensure, a yeomanry attached to the

soil. Though driven by the acts of others to make great changes in her land laws, South Australia did not accept the pernicious vagrancy of free selection before survey. In 1888 "credit selection" was abolished, and leases for twenty-one years, with right to purchase, were adopted.

It was hardly to be expected that after the question of remitting the debts of selectors had been raised in New South Wales and Victoria, the denizens of South Australia, which yielded scanty crops, would abstain from urging claims for consideration. Cultivation was extended rapidly into the territory north of Adelaide, and the yield per acre diminished as the area which had less rainfall was subjected to the plough. For some time South Australia declined to grant indiscriminate aid, or to allow the payment of interest to be accepted as a discharge of the principal of the debts of selectors; but the scanty yield of wheat induced the government to allow selectors to cancel their existing obligations in certain cases in 1882, and re-buy at a lower rate farms which had been unprosperous. South Australia contended with the aridity of her climate as well as with the temptations held out by her neighbours. The low average yield of wheat per acre brought into strong relief the natural difficulties with which she had to contend.

The wholesale evasions practised under the Act known as the Duffy Act in Victoria were in South Australia impossible; and the enormous alienations effected under the same Act because Mr. Duffy either did not know the meaning of the word "assigns," or knowing it, sanctioned transactions which he professed to oppose, found no counterpart in Adelaide. Severely as South Australia guarded against the "dummyism" rampant elsewhere, it was confessed that it existed in the agricultural colony; but it was rigorously repressed. Whether her people will be prudent enough to return to the soil the elements needed for reproduction remains to be seen. In the first task of subduing the earth they have been pre-eminent. The quality of their wheat was vouched by its carrying off prizes at European exhibitions. A part of her well-earned success South Australia gladly ascribed to the ingenious Mr. John Ridley, one of her own colonists.

In a time of prostration, when for lack of sufficient labour it was dreaded lest crops should rot upon the field, he sought a remedy, and in the summer of 1843-4 showed his neighbours the Ridley reaping-machine, reaping and thrashing in his field under the control of two men, one of whom guided two horses and the other managed the machine. Labour and time were economized. An hour after the golden treasure had waved upon the wheat-stalk some of it was converted into flour fit for the use of man. Soon the reaping-machine was in every field. That Mr. Ridley became a hero, that a testimonial was publicly presented to him by Governor Grey, that he received the thanks of the Legislature, and valuable plate obtained by subscription, and that more than a generation after his exploit grateful colonists determined to keep his memory green by a permanent foundation within the Adelaide University, was only fitting, and deserves to be chronicled.

Another name is honoured in the land, and the labours of Mr. R. R. Torrens, like Mr. Ridley's, benefited adjacent colonies. The first Treasurer under responsible government, he had previously served the State as Commissioner of Customs, and conceived the bold idea that—maugre all the meshes of the law, and the hardening into custom, strong as law, of the habits of generations—he could, if the colony would hear him, show how the transfer of land could be as easily effected as the transfer of shares in a ship, which commercial usage sanctioned without the intricate and expensive processes which encumbered and delayed transactions in land. He would give security of a title which might with the utmost ease and simplicity be negotiable and transferred. He had no fair field of nature to deal with. Rather his task was like Rinaldo's in the enchanted grove near the camp of the crusaders. Others had abandoned the task in horror. Wherever he struck, groans of the lawyers warned him that his deeds were impious. It was impossible, they said, that aught but unutterable woe could flow from his rashness:—*Non turba questa secreta sede.* But, like Rinaldo, though the foe was hundred-armed, he smote down the tree of evil growth, and like the army of Godfrey, the colonists in a serener air could enjoy the bounties of Providence of which dark in-

cantations had deprived them. Head of a ministry in 1857, he quitted the political arena to devote himself to his task. Public opinion supported him against Bench, Bar, and scrivener. The Real Property Act became law in January 1858, and was to be operative in the following July. He resigned his seat in Parliament, and became Registrar-General in order to make regulations and control the working of the law. Amid prophecies of failure he achieved success. Title by registration was substituted for title by deed. His instructions were so clear that an ordinary person with time at his disposal could dispense with legal assistance in complying with the forms; and the cost was almost nominal. The dust of ages was swept away. By the old law every change of ownership lengthened the chain of which each link had to be tested in every subsequent transaction. By the new law the last registration was complete in itself, and no retrospective searches or opinions—no new intricate deeds—were needed. To ensure the soundness of every transaction a percentage of one half-penny in the pound was paid when land was for the first time subjected to the law. The fund thus created was guaranteed by the State in order to compensate rightful proprietors who might have failed to protect themselves when lands were brought by others under the Act. The precaution was wise, but almost superfluous. When thousands of properties had been registered no claim had been made upon the fund. When the accrued fund exceeded £30,000 only £300 had been required to meet demands.

The same success attended the Torrens Act in Victoria, where in 1879 7,557,700 acres had been subjected to its provisions. The guarantee fund was then £57,000; only three claims had been substantiated upon it, and they involved an aggregate payment of £718. Mr. Torrens protected third persons by enabling them to enter caveats. Advertisements and notices warned all owners and neighbours of an intention to submit any property to the law. He had one crowning advantage which only a new territory could offer. All lands alienated from the Crown after the date of his Act were subject to it. At the end of 1879 the value of property brought under the Act was nearly twelve

millions sterling in South Australia alone. Long before that time Mr. Torrens had grafted his reform upon the neighbouring colonies. To some he went while the lawyers were arraying their forces against the dreaded innovation which was everywhere proposed, everywhere opposed, but everywhere triumphant. Mr. Torrens was knighted by the Queen in 1872.[48]

There is so much to praise in the results of the labours of the public men of South Australia that it has been unnecessary to dwell at any length upon their faults. That some of them had faults, with which it is needless to encumber these pages, may be inferred from a statement made to a Select Committee of the South Australian Assembly in 1872 by Mr. J. Hart, C.M.G., a man who had been a member of eight ministries and leader of two. "I have expressed my opinion on the hustings, and in the House, that the Parliament of 1868 was the most corrupt that ever sat in South Australia." The rapidity with which ministries were formed and transformed in Adelaide was shown in a paper laid before the Legislature in May 1878. Between 1856 and 1877 there had been thirty ministries. All of them had contained a member of the Legislative Council.

The vast tract now called South Australia, including her northern territory bounded by the Arafura Sea, was not her original domain. At first her northern limit was the 26th degree of south latitude. McDouall Stuart's exploits and the energy of the South Australians induced the Imperial Government to enlarge the domain by granting the northern territory. In 1864 the colony resolved to subdue its new acquisition. Land orders were offered for sale in England and in Adelaide. The colonists passed a special land law for their new territory. To invite settlers to so remote a spot the price of land was fixed at 7s. 6d. an acre on credit. Survey was to precede selection, as in the south. Special blocks of 10,000 acres might be secured at the price named. Advantages were offered to graziers in shape of long leases at low rates. To cultivators of sugar a bonus of £5000 for the first 500 tons of sugar produced and manufactured in

[48] The "Colonial Office List" (1879) states that he was knighted "in recognition of his services, more especially in connection with the Registration of Titles to Land Act."

the territory was offered; and although it was not claimed, and though the progress of the settlement did not keep pace with hope, the colonists might feel that, as far as they were concerned, they had done what they could. When gold was found a royalty was levied on exportation at the Custom-house.

A few miles of railway were made in South Australia by private companies, but after brief hesitation the government undertook the task, and each extension northwards raised hopes of a transcontinental line to Port Darwin.

The statistics appended to this volume show the latest published records of the railways of all the colonies. The debt per head of the populations would imply a heavier burden on Queensland than elsewhere, but when her territory and resources are considered a different result is obtained; and, on the other hand, if a mere test of unalienated land were applied to the enormous but arid wastes of Western Australia, delusive conclusions would be arrived at.

Municipal government did not thrive in South Australia without check. The Corporation of Adelaide, established in 1840 by Colonel Gawler, was extinguished in 1843, and Commissioners reigned in its stead. In 1852 Sir Henry F. Young passed an Act to reincorporate the town, and Mr. (afterwards Sir) James H. Fisher, who had been Resident Commissioner of Crown Lands at the foundation of the colony, and had been thrice Mayor of Adelaide during the brief existence of civic functions, was again elected, and Adelaide retained its corporation thenceforward. Other corporations were established under Acts which enabled two-thirds of the householders or owners in a district to put the law into operation, and in 1887 a general system of local government was adopted.

A Botanic Garden, supported by the government, under the care of Dr. Schomburgh, grew to be the delight of the citizens and of visitors. A Royal Agricultural Society, established in 1845, made its influence felt in promoting the general progress. The pest of rabbits threatened to destroy pasture and crops. A law was passed to make extermination compulsory, and it was extended to unalienated Crown lands.

The tariff of South Australia was fixed "for the purpose of raising revenue, and not with a view to protection." Such were the words in an official pamphlet circulated by the South Australian Government at the International Exhibition in Melbourne in 1880. An *ad valorem* duty ranging from ten to five per cent., and special duties on such articles as spirits, wine, beer, and tobacco, were deemed sufficient.

South Australia had a peculiar difficulty with regard to her boundary on the east. The 141st east parallel of longitude divided her from Victoria. Until an accurate survey was made the surface-line of division could not be ascertained, and in the meantime sparse settlement took place. When a survey was made it seemed that some who had thought themselves in Victoria were really in South Australia. The latter colony thought that mathematics would be respected even by people who distrusted abstract principles of political economy; but some Victorian ministers were hurt at the insolence of the globe, and declined to conform to the position of the parallel. It cannot be said that the people generally objected to what was right; but in 1895 no agreement had been arrived at.

For many years Western Australia maintained her grants in aid of religious ministrations. The "Year-book" for 1894 showed that she granted to the Church of England £2004, there being 88 churches and 27 ministers; the Church of Rome, £1009, there being 27 churches and 10 ministers; Wesleyans, £369, there being 46 churches and 11 ministers; Presbyterians, £161, there being 5 churches and 4 ministers. The school system (under Acts of 1871 and 1893) was compulsory, but fees were paid, though there was a "free list" for children whose parents could not pay fees. There was a Minister for Education, and District Boards were elected, the franchise of electors being £10 of annual household value, or being the parent or guardian of a child attending a school receiving State aid.

In 1893 there were 106 government schools at a cost per head of £3 8s. 8d., and 21 assisted schools at a cost per head of £1 6s. 6½d. There were two scholarships annually offered at the High School, Perth, the governors of which

In 1893 the Central Board, which had administered the system of education, was abolished, and a Minister for Education assumed control. In brief space of time great change was made by legislation. State aid to assisted schools was abolished, and the Treasury was called upon to compensate the injured managers. The government schools in operation in 1895 were 133 in number, and an Inspector-General was found in the person of Mr. Cyril Jackson, M.P. for the Tower Hamlets. Moderate school fees were enforced under the Central Board. The annual report for 1895, not weighing the loss of noble feeling which receipt of alms may involve, descanted upon the large number of children admitted without payment of fees.

Half-an-hour was, under the old system, daily devoted (under protection of a conscience clause) to religious instruction.

Western Australia furnished proof of the rapid rate at which the criminal class disappears, and dissipation and irregularity, mental and physical, avenge society upon its social parasites. Twenty-eight years after the colony had been made a penal settlement, and ten years after transportation to it had ceased, two-thirds of the worn-out creatures who were maintained in the poor-house were of the convict class.[49]

Governors in Western Australia may be mentioned briefly; but as legislation and administration already described were mainly controlled by themselves, it is needless to do more than mention here the order of their succession.

Captain Fitzgerald, R.N., who had the melancholy task of receiving the first convicts at Perth, governed from 1848 to 1855. His successor, A. E. Kennedy, Esq., had retired from the army and had entered the Civil Service in 1848. His despatches show how laborious he was on behalf of the community. When he left in 1862 the population exceeded 17,000, but some of the new elements were unwholesome. His successor was Mr. J. S. Hampton, whose experience in Van Diemen's Land as comptroller of convicts was deemed appropriate training for the office of Governor in the only southern colony to which convicts were then transported.

[49] Report on Blue-book for 1877. Western Australian Council Papers.

He remained in the colony till November 1868. In tha year transportation was discontinued, and the post o Governor was conferred on Mr. F. A. Weld, who earne respect in Western Australia as elsewhere. When he wa translated to Tasmania in 1874, his successor at Perth wa Mr. (afterwards Sir) W. C. F. Robinson (a brother of Si Hercules Robinson).

In 1877 Sir Harry Ord became Governor at Weste Australia, and Sir W. C. F. Robinson succeeded Sir Harr Ord in the government of the Straits Settlements. Si Harry Ord had warm friends and was not without enemies nor, where responsible and powerful, would it be possibl for a capable man to escape hostility. Duty compels action action begets opposition, if not enmity. Sir W. F. C Robinson returned in 1880 to Perth. Mr. Weld was trans ferred from Tasmania to the Straits Settlements which Si W. Robinson had quitted, and over which Sir W. Jervois the Governor of South Australia, had recently presided In 1883 Sir W. Robinson, leaving a substantial balance i the Treasury at Perth, was translated to Adelaide, and Mr Napier Broome was made Governor of Western Australia In 1890 Sir W. Robinson resumed the government and wa succeeded (after an interval of administration by the Chie Justice, Sir A. C. Onslow) by Colonel Gerard Smith i 1895, after the discovery of rich goldfields had attracte world-wide attention.[50]

Sir Gerard Smith had to deal with a problem arising ou of a provision in the Constitution Act, which differed from any other then extant in Australia. The Imperial Statute of 1891 (embodying the provisions of a bill passed in th colony in 1889, and received with much rejoicing) appro priated annually five thousand pounds of the colonia revenue for the maintenance, education and welfare of th aboriginal natives. The Treasurer was to issue that su to an Aboriginal Protection Board, and it was to be ex pended (sec. 70) by that "Board at their discretion unde the sole control of the Governor, anything in the Aborigines Protection Act 1886 to the contrary notwithstanding, pro vided always that if and when the gross revenue of the colony shall exceed five thousand pounds in any financia

[50] *Vide* Vol. II., pp. 636-639.

year an amount of one per centum on such gross revenue shall, for the purposes of this section, be substituted for the said sum of five thousand pounds in and for the financial year next ensuing. If in any year the whole of the said annual sum shall not be expended, the unexpended balance thereof shall be retained by the said Board, and expended in the manner and for the purposes aforesaid in any subsequent year." The spirit of Governor Hutt seemed to be revived in these words. They appeared to be honourably proposed and if honourably acted upon they gave assurance that the natives, roughly estimated at ten or fifteen thousand, would be honourably cared for. But power tires the quality of men, and produces perverse results. When under the influence of a "rush" to the goldfields, the revenue rose by "leaps and bounds;" it was thought absurd (by some who had approved the 70th section) to pay respect to considerations of honour. One per cent. of a revenue mounting to millions was as superfluous for the blacks as "the following" guaranteed by his daughter to King Lear. The nobility of promise-keeping is not precious when men's eyes are directed to some other gain. In 1894 a local bill to sweep away the compact was reserved for the signification of Her Majesty's pleasure. A memorial from the Legislature urged that the Royal assent should be given to the bill, and a memorandum from the Aborigines Protection Board represented that the colonial authorities did not facilitate the work required.

The Colonial Secretary (Mr. Chamberlain), while willing to abandon the provision that the expenditure should be under the sole control of the Governor, demurred to the annihilation of the sum guaranteed. Thereupon Sir John Forrest, the head of the Ministry, furnished a minute (April 1896) urging (in reply to the contention that "as the colony accepted responsible government, subject to the 70th clause of the Constitution Act, it is not reasonable to ask for its repeal) I can only say that the colony does not wish to repudiate any of its engagements, but having tried to conform to them they are found to be utterly useless and unworkable, and this being so, surely it is not advisable to continue the objectionable and useless law, and in that case Parliament is justified in respectfully

asking for its repeal." He pointed out that the Board were "without any officers to carry out their wishes and instructions." "Why (said Sir J. Forrest) all this outward show of sympathy for the aborigines, and at the same time want of confidence in the colonists of Western Australia, who alone have done whatever has been done for their welfare?"

Moreover, Sir J. Forrest declared that Mr. Chamberlain's proposal would be inoperative "if the government agreed to it, and afterwards wished to evade their responsibilities," as "there would be no obligation for the government to spend the annual vote, and the government would be masters of the situation."[51]

The number of his fellow-subjects whom the writer's plans would leave uncared for rather than keep faith, was, according to Sir Gerard Smith's despatch (19th May 1896) "15,000 or more, whose means of livelihood we have destroyed, whom day by day we are driving back further and further into remote spots, to whom we deny the privilege of sharing in paid labour on the mine fields, whose wells and water-soaks are exhausted by the incursion of large parties of explorers with horses and camels, and whom we flog[52] and imprison with a severity out of all proportion to the nature of the offence committed, when they yield to a temptation induced by starvation and thirst."

The Chairman of the Aborigines' Protection Board

[51] cf. *supra* pp. 147, 148, &c.

[52] A terrible confirmation of this indictment was furnished at the time at Geraldton. Three men were tried there for the manslaughter of a native. It was admitted that he was "chained by the feet and neck to verandah posts and flogged with a whip by two men in succession, one taking up the work when the other was tired. The sufferer died within three days. The only defence (urged by one witness) was that he "died of some stomach disease." The jury disagreed. There was doubt whether the venue would be changed to Perth for a new trial; but the political sensitiveness of dwellers at Geraldton was more to be considered than the life or liberty of a black fellow-creature, and a new trial at Geraldton ended in acquittal. At the first trial two magistrates testified that any flogging (of the poor creature slaughtered) was, in itself, unlawful, not having been sanctioned by a magistrate—such sanction being obtainable in certain cases under the law in Western Australia. Ought not these things to be exposed? What a commentary upon them is furnished by Sir J. Forrest's boast that the government could easily evade the responsibilities of good faith and humanity, and "be masters of the situation."

contended (May 1896) on their behalf that Sir J. Forrest's statements were more "remarkable for virulence than gravity."

The latest official publication accessible while this page is written is a despatch from Mr. Chamberlain announcing his readiness "if Sir J. Forrest will state what arrangements he proposes to make for fixing definitely the responsibility for estimating the requirements of this service, and for the distribution of the funds provided by the Legislature to meet those requirements in such a manner as is required, as is indicated in paragraph 16[53] of your despatch, to lay the correspondence before Parliament with a view to ascertaining the general feeling of the House of Commons on the subject."

The land system of Western Australia so inauspiciously commenced, and so speedily crushed by Gibbon Wakefield's pamphlet, and by facts, was modified by the necessities of the case. The tillage leases of former time still figured in returns. In 1873 there were 804 such leases, covering 85,466 acres. When rent equal to 12s. 6d. an acre had been paid, the tiller was to obtain the fee simple. The code of regulations promulgated in 1864 was superseded in 1875 by another based upon a new law. It could not be expected that Western Australia could withstand the demand for deferred payments which had spread over the continent, and in deference to which South Australia, marching with her by a parallel of longitude, had lowered the price of land in the northern territory to 7s. 6d. an acre. The weak neighbour imitated the strong by enacting that during a limited time land might be selected at the same rate as in her northern district.

The purchases of land by the scanty population for which responsible government had been claimed, formed a strange contrast to the vast tracts lavished on the first settlers. From 1873 to 1877, 1161 lots were sold, containing 97,045 acres. But the humble sales of five years

[53] Sir Gerard Smith deemed that "statutory obligations should be entered into" by the Western Australian government, which, while repealing clause 70 of the Constitution Act, should "in substance give some security for the discharge of the functions of the Aborigines Protection Board, which would be abolished."

produced revenue. Upwards of £7000 were received in 1877. The rents of land yielded in that year more than £23,000. The afflicting poison plants were not easily subdued. Leases with conditions for eradication had not prospered. In 1877 an area of 235,458 acres was abandoned, though ten lessees adhered to their task on about 90,000 acres. Among the regulations remitted from the colony to the Colonial Office for approval were those which enabled a Crown grant to be issued to lessees for twenty-one years of not less than 1000 acres "infested by poisoned indigenous plants." One pound a year, for every 1000 acres, paid in advance, eradication of the poison plant, and proof that for three years it had not reappeared, with certain conditions as to fencing, and payment of all survey fees, and the "production of necessary evidence," entitled the adventurous lessee to a Crown grant. Regulations, formally approved by Lord Carnarvon (Nov. 1877) divided Western Australia into four districts, and copious regulations were made for the management of Crown Lands within them. Later regulations divided the colony into six districts—the South-west, the Gascoigne, the North-west, the Kimberley, the Eucla, and the Eastern Divisions. The last-named comprised 492,000 square miles, the Yilgarn and Coolgardie goldfields, and millions of acres of the desert through which Sir John Forrest and other explorers had fought their way.

It is unprofitable to dwell at length on the regulations framed for the administration of lands in the divisions. In 1887 town and suburban lands were to be sold by auction. Agricultural areas were formed in which the maximum quantity to be held by one person was 1000 acres, and the minimum 100 acres. Conditions were laid down as to improvements necessary to entitle the occupant to a Crown grant. In five of the divisions special areas of not less than 5000 acres were obtainable at 10s. an acre. Free selection was permitted outside of agricultural areas, and pastoral lands were granted on lease. Mineral leases were provided for; but subsequent discoveries of gold in large quantities called for a new Mineral Lands Act in 1892, and in 1893 a Homestead Act was passed, providing for free homesteads and homestead leases. This Act was

amended in 1894 by a legislature which is diligent, and which it must be hoped will be able to cope successfully with the social evils which crowd upon a territory subject to the sordid results of the discovery of gold. At the end of 1893 the Crown Lands alienated were nearly six millions of acres, and more than ninety millions were held under pastoral regulations. The principal export was wool. The jarrah (*eucalyptus marginata*) furnished for other countries timber which defied decay, and repelled termites and teredo. Sandal-wood, exported to a value of £70,000, had found a market in China at from £7 to £10 a ton, and the destruction of the forests seemed more profitable than the toilsome production of corn for the use of man. Grain and flour were largely imported. Another gift of nature was discovered. Pearls (*meleagrina margaritifera*) had been found at Nickol Bay (Dampier's Archipelago) in 1861 by Gregory the explorer. The export was scanty for several years, although restless spirits from various lands gathered on the spot. The aborigines and Malays were employed as divers. The Dutch government exacted security for proper treatment of the Malay divers hired in its territory, and employers who were careless of the comfort of divers often preferred the friendless Australian, whose wrongs no foreign power could resent. In 1871 the exported value of pearls was £13,000. In 1872 it was £25,000, and in a few years it had reached £70,000. At Shark Bay the true pearl oyster (*aricula margaritifera*) was found.[52] The rich Geraldine lead mine, the discovery of which excited so much interest, was not destined to gratify the expectations of those who hoped for speedy profits. After fifty years the total export of lead was reported to be 34,000 tons, and declining prices caused the export to cease in 1893, both of lead and copper. Iron ore is abundant. The colonists, however, shared in the belief of their neighbours, that a goldfield was the one thing needful to cause happiness. In 1862 they offered £5000 for the discovery of a goldfield, and accepted an offer from Mr. Hargraves to examine the territory if they would pay his expenses and give him

[52] Shells from Shark Bay were estimated at £120 to £190 per ton; those from other places were valued sometimes at £4.

£500. If their end had been wise the means would have been defective, for the explorer had no scientific qualifications. He had merely shown in New South Wales how by the use of a cradle the miners in California washed gold from drift. He searched for gold near the Murchison river, where other minerals had been found, but he saw no goldfield. He did not venture to say there was none. He rather sought to buoy up the eager colonists. They scraped without avail.

About eight years afterwards a shepherd at the Upper Irwin river reported a discovery of gold, and high hopes were entertained of the "Peterwangy goldfields," which were to attract, like Ballarat, hordes of miners; but they were disappointed. The main facts as to recent discoveries have been given already in Chapter XIV. The sluice-gate is opened, and the tide which has wrought such changes in California, Eastern Australia, and South Africa is let loose upon Western Australia. That which has been thought her curse may prove to be a blessing if her rulers be wise. She has no wide spaces of rich land to tempt the cupidity of the sordid crowd, or intoxicate the minds of her public men, or tempt them to squander the territory with which they have been endowed. She may perhaps under such circumstances exhibit a prudence which has been lacking elsewhere. She may avoid the evils of universal suffrage and mercenary legislators. She may husband her lands so as to be able to build her railways[53] without incurring debts which involve the grinding taxation already felt by an eastern neighbour, where the land was not bartered, but flung away under "free selection." The remoteness of Western Australia from other communities, and her vast extent, naturally inclined her to hasten the construction of telegraphic lines. In 1893 she had 4300 miles in use, and King George's Sound being the first point at which mail steamers from the Red Sea touch Australia, it was from

[53] Western Australia has lines of railway constructed by companies which received concessions. Five hundred and seventy miles of such lines were in working order in 1894. One company received 1200 acres of land for each mile of railway, half of the frontage to which was reserved by the government. In 1896 a loan of some magnitude was resolved upon to equip the colony with its own railways and with debt.

the little town of Albany that important news was flashed to the other colonies along the track of Eyre in 1841.

The construction of roads in a vast territory sparsely inhabited was of necessity costly, and yet without some roads traffic would have been impossible. While convicts were sent to the colony, they were employed in making roads near Perth, and Governor Hampton availed himself of their talents in building a Government House. Like General Wade in Scotland, or Sir Thomas Maitland in Cephallonia, Governor Sir Harry Ord addressed himself to the task of road-making. He obtained the assent of the Legislative Council to a special loan of £50,000, which was to be administered by a Central Board over which the Governor was to preside.

The port of her metropolis was a source of anxiety. Fremantle, twelve miles from Perth, stood at the mouth of Swan River. Various plans of breakwaters were obtained. To remedy acknowledged defects the colony was ready to incur a debt of £100,000, and the eminent Sir John Coode was asked for his opinion. He recommended a viaduct and breakwater scheme, involving an outlay of £638,000, and advised that the least sum which could be usefully expended was £242,000; the costlier plan being on the north, and the other on the south of the Swan Heads. Neither sum was then within the grasp of the colony, which sighed to think that at King George's Sound she possessed a harbour unsurpassed throughout the world, but dislocated from the general uses of her people.

The times were out of joint. If highest happiness consist in exports and factories, Western Australia was miserable. She had a climate second to none on the globe, but her people could not be content to breathe pure air. They craved the hurry and morbid excitement engendered by the discovery of gold.

Before their longings were gratified they had obtained responsible government. In 1889 the local legislature prepared a draft bill. In 1890 the Imperial legislature passed the necessary statute. Two Houses were created. The Upper House (of fifteen members) was to be nominated until the population of the colony might be 60,000. After that consummation it was to be elected on the basis of a

higher suffrage than that created for the Lower House (of thirty members). Sir W. Robinson entrusted Sir John Forrest, the explorer of former days, with the task of forming a ministry, which he speedily accomplished. As population flowed in to the goldfields, the population limit which was to justify the holding of elections for the Upper House was reached in July 1893, and the elections were held. The new Parliament passed measures deemed necessary. The Upper House was enlarged. Twenty-one members were to be elected by seven provinces for a term of six years; and the electors were to have a property qualification which, in the case of householders, was to be £25 annual value. The Assembly was to contain thirty-three members, elected for four years.

Thus equipped, the colony was launched into the career for which she had longed, and had to confront the sudden difficulties caused by the rush of gold-seekers to a vast territory unprovided with roads and means of transit or accommodation. It cannot be denied that the ministry of Sir John Forrest and the two Houses addressed themselves diligently to their task.

The progress of Tasmania, after she armed herself with responsible government, was less chequered by woe than a cursory observer might have expected. Dregs of a convict population did not influence the elections to the extent predicted. The goldfields of Victoria had drawn thither thousands of the worst of the freedmen. Nor did the public men of Tasmania indulge in an ill-omened struggle to rend and patch their Constitution before testing its worth. Much of the superior steadiness of Tasmania was derived from the ability and character of Mr. Francis Smith, who was Attorney-General of two administrations (in 1856 and 1857), and on the formation of the fourth ministry (created within seven months of the adoption of responsible government) became Attorney-General, and held his post as head of a ministry for more than three years, amidst general respect. He was then (1860) made a Judge of the Supreme Court, and ten years later became Chief Justice. He had not been deterred by fear of popular clamour from urging that the colonies were not ripe for a system of government which would entail frequent changes

of administration in a community not abounding in men possessed of leisure, capacity, and experience in public affairs. His own example tended to ward off from Tasmania some of the evils he described.

Sir H. F. Young, who presided during the introduction of responsible government in Tasmania, saw an Industrial Exhibition opened in Hobart Town before he gave place to a successor, Colonel T. Gore Browne, who, like himself, had previously been Governor of another colony, and, like him, won esteem in Tasmania. Mr. (afterwards Sir) Charles Du Cane succeeded him in 1869, and was equally applauded throughout his tenure of office. After him, Mr. F. A. Weld, who had governed Western Australia from 1869 to 1874, earned the same kindly esteem. He encountered difficulties arising from disputes between the Houses of Parliament; and, though an arbitrator can seldom gratify disputants, his conscientious urbanity impressed upon the colonists the advantage derived from the presence of an impartial representative of the Crown on occasions of local strife. Even when, in discussing the exercise of the prerogative of mercy, as distinguished from the reversal of a judicial sentence, Mr. Weld became involved in a heated discussion with the Chief Justice, and the Secretary of State deprecated the strife, the mutual courtesy of the Governor and the Chief Justice in dismissing the unpleasant subject made some persons say that it was well that offence had arisen, in order that such an example of reconciliation might be seen. Mr. Weld was succeeded in 1880 by Sir J. H. Lefroy, who was induced to undertake the government for a brief period, until Sir G. C. Strachan could be transferred from the Cape of Good Hope to Tasmania.

Sir Robert G. C. Hamilton became Governor in 1887, and on his departure in 1892 was succeeded by Viscount Gormanston, who assumed office in August 1893.

Her public men provided for Tasmania some guarantee that voters would have an interest in the public welfare. Both Houses were elected. The lowest property qualification in voting for the Assembly was for some time a household rating of £7 a year, and the roll is still taken from the lists of owners and occupiers and those who have stated incomes.

Education, about which Sir G. Arthur was solicitous, was not neglected when a Tasmanian Legislature assumed control. The law made education compulsory, by inflicting fines on neglectful parents, but did not make it eleemosynary. In 1878, when the cost of schools to the State was £15,410, parents contributed in school fees £5883. Nevertheless, more than one thousand children received free education. In 1894, 247 schools were in operation with an average attendance of 10,954 scholars. "The system of instruction is non-sectarian, but religious instruction is given in the schools by clergymen or other teachers."[54] Exhibitions were attainable at the schools, and the University of Tasmania[55] conferred scholarships.

In 1853 a public subscription had commemorated the foundation of the colony (1803) by founding twelve scholarships, half at the Hutchins School and half at the High School.

During Sir W. Denison's government, efforts were made to retain persons already in Tasmania, or to attract others thither by exceptional facilities in acquiring land. Famishing for labour, the colony hoped to relieve its necessities by tempting the needy to become competitors with employers of labour. For Tasmania Gibbon Wakefield had explained in vain the problems of colonization. She lowered the price of land by various devices which enabled one of her sons to boast that she had "by far the most liberal land system in Australia." The unfettered selection sanctioned in New South Wales and Victoria was prevented from sacrificing the public domain in Tasmania rather by her secluded position, early settlement, and scanty population, than by the circumspection of her public men. Moreover, it would have been impossible to stir up hatred against graziers on Crown lands, when out of a million and a quarter of sheep only about 100,000 were fed upon those lands.

It is in the nature of things that legislation, founded neither on abstract truth nor imperious necessity, should be inconstant; and Tasmania altered her land laws to suit her own condition when she found that her "most liberal

[54] Australian Handbook, 1896, p. 468.
[55] *Vide supra*, pp. 335, 336.

land system" did not divert population from the goldfields and centres of population in Australia and New Zealand. In 1879 she had resolved to part with no arable land for less than £1 an acre, and to sell it by auction, except when alienated by selection on deferred payments in districts officially designated as agricultural. In them the price was to be £1. By slow degrees, both as to sales and pastoral leases, she became prudent in parting with her domain. There was steady increase of live stock and grain crops. In a Land Act of 1890 Tasmania adhered to the price of £1 per acre. One plague of the mainland was rife in the island. An Act was passed under which special districts were proclaimed, trusts were created, and a rate was levied for the extermination of rabbits. Yet, though 1,131,000 rabbit skins were exported in 1878-9, an official report declared that the animals were more numerous than ever, and that "the magnitude of the plague was not understood or realized," although in some places settlers worked energetically to protect their properties from "their neighbours' rabbits."

Though the spirit and industry of Tasmania were clogged by temptation in a neighbouring colony, they nevertheless found partial field at home. Slowly increasing in number, her children loved the land of their birth. They scarcely envied the riches of other lands while pining for material advantages at home. There was a charm to them which compensated for richer gifts abroad; and in the beauties of her rocky coast, her diversified mountains and glens, her quiet sylvan beauties, and, above all, her delicious climate, she was unsurpassed, if not unrivalled. The mountainous and wooded nature of the island prevented pastoral competition with the plains of Australia. Success was the fruit of labour and skill with the Tasmanians. The greater part of their land was covered with dense forest, but their well-bred sheep commanded high prices on the continent. In the half-century which elapsed between the occupation of Hobart and the discovery of Australian goldfields, the settlers, encouraged by grants of land and of convict labour, had secured the most desirable spots throughout the island, and smiling orchards produced fruits which, in days of free-trade, found a ready market in Melbourne. The

population, too small to overspread the land, had made homes in its choicest places.

Amidst her struggles, Tasmania felt wounded by the protective duties which barred her fruits from the Victorian markets; and one of her statesmen was active in intercolonial conferences, with a view to remedy the island-wrongs. Annexation, when suggested, offended the islanders, who complained that, though Bass's Straits were narrow, a narrower policy made it vain to cross them. At an intercolonial conference held in Melbourne in 1871, Mr. (afterwards Sir) J. M. Wilson, from Tasmania, was prominent. By their various Constitutions the colonies were empowered to impose what Customs duties they thought fit, provided they were not differential. Thus imports from England were liable to the same duties as all other imports of like articles.

At the Conference of 1871 it was proposed, but vainly, to establish a commercial union of all the colonies, with proportionate distribution of the Customs revenue. Mr. Wilson then supported a demand for the removal of all restrictions on "intercolonial fiscal arrangements," and in a paper drawn up by Mr. Duffy for Victoria it was urged that obstinacy on the part of the Imperial Government would weaken, and ought to weaken, the allegiance of the colonies. By "reciprocity conventions" it was hoped to unravel the tangled mesh in which varying tariffs had involved intercolonial relations.

Lord Kimberley demurred to propositions which seemed to question the right of the Crown to conclude binding treaties, "subject to the discretion of the Parliament of the United Kingdom, or of the colonial Parliaments, as the case may be, to pass any laws required to bring such treaties into operation."

At a conference in February 1873 "intercolonial commercial reciprocity" was again demanded. The public mind in no colony was vexed by the question, but popular men had taken it up. Whether ignorant of the first fact, or apprehensive of vexation from the last, Lord Kimberley (in a Gladstone ministry) passed the Australian Colonial Duties Act 1873, which empowered each colony to impose or remit the differential colonial duties, and constituted

Great Britain as ranking only with the foreign countries, amongst which there was to be equality with regard to duties on importation.

It must not be supposed that while these things were done there was any public disaffection or desire amongst Australians for estrangement from the mother country. On the contrary, about the date of one of these conferences, they applauded the ode in which Tennyson stirred the sympathies of Englishmen "loyal to their own far sons, who love an ocean empire with her boundless home for ever broadening England."[56]

Lord Kimberley's Colonial Duties Act of 1873, though eagerly sought by aid of telegrams, was not quickly put to use. They who grudged impartial trade to all found it difficult to make special arrangements with some. New South Wales and Victoria, with a long line of land frontier, were disturbed by difficuties as to border duties, and an irritating tax upon live stock entering Victoria was imposed.

An intercolonial conference was held in Sydney in 1881. Mr. Berry and Mr. Vale represented Victoria. Mr. Giblin, with a colleague, represented Tasmania. Intercolonial free trade was again discussed, after it had been resolved that a Federal Constitution, with a Federal Parliament, was desirable, but that the time for it had not arrived. Mr. Berry's proposal that the land funds of all colonies should be transferred to Federal control found no support. A colony which had squandered her limited territory could not expect those who retained boundless pastures to merge their plenty in her want. Out of about fifty-six millions of acres constituting Victoria, her statistician reported in 1882 that less than nine millions were available for selection.[51] The Treasurer of New South Wales (Mr.

[56] Canadians agreed with Tennyson. The *Montreal Gazette* (alluding to Mr. Duffy's proposal [*vide supra* 274-275] that the colonies should be neutralized in time of war) said it was mere "puerility." Foreign nations would consent to no such restriction. "This is not the principle upon which to build up a hardy self-assertive dominion anywhere. . . . The Empire must not be thus disintegrated. . . . It is not of such weak fibre that British colonists are made; and if their Australian representatives have seemed to confess an unworthy timidity, we have still confidence that their own constituents will be proud to repudiate the imputation quite as promptly as our own people of Canada."

[51] Hayter's "Victorian Year-book," 1881-2, sec. 958.

Watson) carried a resolution that a joint commission of all the colonies should be appointed to construct a common tariff, but both the Victorian delegates voted against him, and against a subsequent resolution that "it be an express instruction to such commission that any common tariff must recognize fairly the interests and special circumstances of each colony."

Tasmania obtained no attention at the conference of 1881. No love to her had prompted the proposals made in 1871 for severance of ties with England. The observant Anthony Trollope, noting that her trade had declined between 1861 and 1870, and hearing a suggestion that she should be absorbed into Victoria, hoped that "the fairest, and prettiest, and pleasantest of all the colonies would not vanish from the roll of Australian States." Happy if they had known their blessings, the islanders pined for swollen statistical tables.

For a time the arithmetical measure of happiness was unfavourable. In one year (1875) the arriving immigrants were outnumbered by emigrants, and the total population fell below that of the preceding year. But diligence receives reward, though late. Visitors from the mainland sought refreshment and society in pleasant Tasmania. A gradual increase in the cultivated area prevailed after 1874. Flocks and herds increased.

Tasmania was not without gold,[58] which was extracted from reefs, the richest of which was near the banks of the Tamar (occupied in 1804). The humble metal, tin, discovered to the westward at Mount Bischoff in 1872, rapidly yielded a larger value than was obtained from the Tasmanian goldfields. The exports of wool, tin, and gold in 1880 were respectively £451,877, £341,736, and £201,655. In 1891 the total export of tin had amounted to £5,301,355. Iron, discovered by the first colonists near the Tamar, was so abundant that several companies were formed, and large sums were expended in endeavouring to smelt it. But a failure to expel the chromium, which made the iron unmanageably hard, deprived it of commercial value, and speculators were disappointed. They had incalculable quantities of ore, but chemical skill had

[58] *cf. supra*, Vol. ii., pp. 622-633.

not discovered the means of fitting it for a market. Coal, also, though obtained in many places, could not be produced so cheaply, nor was it so useful as that imported from New South Wales; but forecast of its future value cheered the dwellers in the island. They maintained numerous factories. Their woollen products won prizes at intercolonial exhibitions; and an offer of £1000 for the production of woollen goods of that value led to the establishment of a factory near Launceston. In 1891 it was estimated by the New South Wales statistician that 7460 persons were employed in Tasmanian factories, and that the value of £858,000 was produced.

Tasmania did not originally undertake the construction of her railways. She aided private enterprise by guarantees, and after a few years a line from Launceston to Deloraine fell into the hands of the government against its will.

A larger work, connecting Launceston with Hobart, was completed by the government after much negotiation. One hundred and seventy-two miles of railway were in use in 1881, and 419 in 1894.

For many years all the Australian colonies which had the power promoted immigration by means of pecuniary grants or land under warrants available on presentation at the Treasury.

Queensland for some time gave free passages to female domestic servants, and contributed towards the immigration of farm labourers, vine-dressers, mechanics, and others.

The "Australian Handbook" for 1896 stated that at that time, in New South Wales, Victoria, South Australia, Tasmania, and Queensland, assisted immigration was entirely suspended, though in the last named colony it had been aided until March 1892. Western Australia, newly put in possession of gold mines, still offered aid, but bound her immigrants not to leave the colony for twelve months after their arrival. In 1878, Western Australia asked her Governor to put £4500 on the estimates "for the introduction of Chinese or other labourers from the East," and he complied.

As the ages of flint and of metals have existed contemporaneously in different countries, so different epochs in

the colonies were shown by the fact that at the same perio there were violent demonstrations against the toleration o Chinese in the eastern colonies. Many persons in all th colonies opposed the influx of Chinese on the ground o morals and of religion. This could not be the motive o those who, while railing at the Chinese, acquiesced in th proscription of religious teaching (at the charge of parent before the opening of their State schools. This inconsist ency reflects no discredit upon the labouring class, in whic there were many as moral and pious as any other member of the community, and which, if like other classes it ma sometimes err, has generally been misled by plotters work ing behind the scenes.

Until the discovery of gold a great portion of immigrant from the United Kingdom had gone to New South Wales Victoria, and South Australia. More than a million of he people had found homes in Australasia [59] in 1875.

There are many aspects of colonial life—many loca occurrences of deep interest—which cannot be dwelt upo in these pages. The history of Australia could be bes dealt with as a whole for about half a century; but whe new colonies were one by one created, or were severed fro New South Wales, it was difficult to present a complet landscape without thrusting it into a distance which de prived it of distinctive light. An epitome which takes th life out of history is of little use. It is like the catalogu of a racing stud. The wise inquirer desires to look at th animals. There are many occurrences which have neces sarily been omitted, because the author desired to compres his pages within comparatively small compass. Eac colony will in time have a copious history of its own. It i sufficient to present here such events as may show "th body of the time" in the days of the pilgrim fathers and o their immediate successors.

There is one question which has not in past years exer cised the thoughts or excited the apprehensions of in

[59] A colonization circular in London stated that, in the period from 185 to 1893, State-assisted immigration supplied 149,000 immigrants to Ne South Wales, 148,000 to Victoria, 159,000 to Queensland, 6000 to Weste Australia, 21,700 to Tasmania, and 116,000 to New Zealand. Ye according to the assertion of Mr. Froude (*supra*, p. 273), it was during th period that a Gladstone ministry strove "to shake off the colonies."

habitants of the Empire, whether domiciled in Great Britain or the colonies; but it is now looming large upon the horizon. The expansion of the Empire has been due to the enterprise of the British people, and not to the initiation of passing governments. A notable exception was furnished in 1787 by the fleet sent by the Pitt ministry to occupy Australia. In that task there was then no field for private enterprise, and the case was one of the rare exceptions which establish the principle of a rule. The nomads of Australia could supply no article of commerce.

The rule has been that British subjects have explored, created settlements, and founded homes, and have been sheltered under the ægis of their mighty mother. Nay, even a wandering subject in a foreign land has invoked and received her aid. It is but the other day that an American senator, alluding to the expedition to Abyssinia under Lord Napier of Magdala, to rescue a few British subjects, declared that he was proud of his claim to belong to the race which did such noble deeds.

Through the enterprise of a few merchants, aided by the old Norse craving for adventure and conquest, the Empire of India sprang to life, and is now a beneficent instrument for the happiness of nearly three hundred millions of the various races which dwell there in peace, confident that the government labours for their common welfare.

"Hæ tibi erunt artes; pacisque imponere morem."

But the world-wonder in India, which has realized the dream of the Roman poet, though it rose from the enterprise of British subjects chartered by Queen Elizabeth, reflects now the capacity of the Imperial Government, and cannot be deemed a colony. It is in the sphere of colonizing, or founding new homes, that Englishmen, Scotchmen, and Irishmen have shown peculiar fitness under British rule. Never before in historic ages had the world seen a mighty nation moulded by the agencies which created in the United States of America a colony recognized now as a mighty nation. Alienation from the parent stock cannot annihilate the historic fact of the original plantation, though it may embitter the reflections of those who lament the errors or the crimes to which the alienation was due. To undo the past is beyond the power of the mother country

or of the colony. They can but prove their virtue by cultivating goodwill in the future. But the enterprise and energy that created the States in North America were not stifled in the 18th century. In Canada, Australia, and Africa they still found scope, and in founding homes abroad in various climes they stimulated the aggrandizement of the mother country, which in ministering to their requirements enlarged her own resources until they became the envy of nations heedful of the accompanying supremacy on the sea.

In the latter part of the 19th century a singular effect has resulted. France and Germany have launched upon a career of founding tributary states. With them Italy and Belgium shared in the partition of Africa. The acquisition of Algeria (1830), attributed to a desire to furnish a field for French military service, preceded the later movements but in 1861 and subsequent years Cochin China, Tonquin, portions of Siam, and various islands in the Pacific, in 1884 the Congo region, in 1896 Madagascar, and various protected regions at Annam, Cambodia, Sahara, Tunis and elsewhere, have testified to the craving of the French for possessions beyond the seas.[60]

The German acquisitions of remote territories in Africa and in the Pacific have been of later dates, commencing in 1884; but the imagination of the German Emperor hailed them in 1896 as Greater Germany.

Russia's march has been upon the land, towards Turkey, Persia, and the farther East. Seaports will follow if land can be acquired.

[60] Cochin China is classed as a French colony in the "Statesman's Year-Book for 1896." M. Etienne, while Under-Secretary for the Colonies, thus described it:—"What is the population? It is 1,800,000 souls. There is a French population of 1600 inhabitants, of whom 1200 are 'fonctionnaires.' How is it administered? It has a Colonial Council elected by whom? By the 1200 fonctionnaires, who have also a deputy. And you expect that confusion and disorder will not reign in that country. . . . In 1887 I tried to reduce the number of the fonctionnaires. I did reduce the cost of them to the extent of 3,500,000 out of 9,000,000 francs. I took that step in October, and in the following December the ministry of which I was a member disappeared. Six months later the fonctionnaires whom I had dismissed had all reappeared in Cochin China." (Chambre des Deputés, 27th Nov. 1890.) It is necessary to bear in mind the variety that exists among communities which are called colonies.

The subjugation of populous lands in torrid zones has nothing in common with the planting of offshoots of a nation where new homes are founded, where self-government follows the founders, and powerful communities, of one life with the parent stock, take rank among those which influence the world. Subjugated lands may be ruled—as Englishmen believe that India is now ruled—with a single eye to the benefit of their inhabitants, and a consciousness that unseen but important collateral advantages accrue to the governing race, strengthening their moral fibre, and ministering at the same time to commercial expansion.[61] These results may be the outcome where the native population is large, intellectual, and lettered, and can be induced to confide in the wisdom and humanity of the ruling power. They cannot be looked for when the indigenous tribes are unlettered and vanish under contact with intruders, whose presence makes the former life of the forest and prairie impossible.

In the eighteenth century it seemed that France had laid in Canada and in Louisiana the foundations of colonies of the type which Great Britain founded in America, Australia, and South Africa. But the systems of England and of France with regard to colonial government differed radically. In 1663 Canada was but a distant French province. There were local functionaries, but they were under direct control from Paris; and there was no municipal government such as existed in the neighbouring British colonies. In 1760, under the guidance of the elder Pitt, the French Canadian province was acquired by Great Britain. France still possessed the vast territory acquired from Spain, and known as Louisiana, but the *habitans* were not of the order which creates the homes and settlements dear to the Anglo-Saxon race; and while Napoleon was still consul, Jefferson, the President of the United States, successfully negotiated with him for the purchase of the territory which comprised the present states of "Louisiana,

[61] Java and other Dutch possessions in the East furnish an instance of possession by a foreign power as contrasted with a colony where the governing race founds homes.

Out of a population of 32,800,000 in 1893 there were 56,000 of Dutch race, and the total European population of Batavia was 9000.

Arkansas; Missouri, Iowa, Nebraska, parts of Minnesota and Colorado, nearly all of Kansas and Montana, the Dakotas, Wyoming, part of Idaho, and the Indian territory."[62] Fifteen millions of dollars formed the consideration. What might have been the fate of such a territory, commanding the navigation of the Mississippi, if France had retained possession of it, it is vain to conjecture. The wildest theorist could hardly imagine that it would have contained, as it does now, more than twelve millions of people owning allegiance to one flag. The acquisitions of French territory during the latter part of the nineteenth century have been mainly in territories unfavourable to the health of Europeans; and large sums in French budgets show that the direct cost of maintaining the local establishments is great. But indirect advantages have been in view, and they have been aimed at by methods which have not met the public eye.

The expansion of British commerce has roused emulation abroad, and to create a Greater France and a Greater Germany beyond the seas has been deemed worthy of profuse expenditure. Large grants have been made, not for service rendered in carrying mails, but to enable a commercial fleet to keep at sea. The British mercantile fleet, created by private enterprise, receives no such alms, and acquires no favours at the public cost. Tenders for carrying mails are openly called for. Shipowners obtain no boon when entering into their contracts, and the British merchant receives no dole at the cost of taxpayers to enable him to maintain his ships at sea.

It is otherwise in France and Germany, where enormous sums are granted to shipping companies to keep them afloat. The grants are called subsidies, and it is assumed that it is wise to oppress French and German taxpayers in order to wrest the carrying trade from the world-exploring English. If the end be not attained, the failure will be due to the energy which has enabled British enterprise to contend against such unequal conditions.[63]

[62] "History of the United States." Rhodes, 1893. Vol. I., p. 27.

[63] The author has been unable to obtain complete statistical information as to the foreign subsidies. In 1896, moreover, a bill was brought forward to increase the German subsidies. One or two facts may be noted. Under

Apart from the grants to shipping companies, the German nation has for many years displayed activity in pushing its manufactures into the markets of the world. Much has been written on the subject, and some alarmists have seen in the advance of German commerce the imminent decay of the British. It is true that German workmen are, or have been, content with lower wages than those of British workmen; but it is not true that the expansion of British commerce was due merely to the prime cost of manufacture. The genius of commerce includes other national characteristics, and mainly by their agency has British enterprise secured its rewards. If with a fair field and no favour any other nation can oust British commerce in any portion of the globe, it would ill become

a contract (under which penalties may be enforced) a sum of £170,000 a year is received in equal moieties by the Peninsular and Oriental Steam Navigation Company and the Orient Company for carrying mails to the East. The Marquis of Lorne, presiding in London at a meeting of the Royal Colonial Institute on the 19th June 1896, stated that the French government gave "£600,000 a year to the Messageries Company," and that the German government gave £45,000 a year to steamers running to Delagoa Bay in South Africa. According to the German budget for 1895-6, the author has been informed that "the subsidy for the East Asia and Australia mail service is 4,090,000 marks (£204,500)." Yet some British subjects travel in these foreign vessels, ignorant perhaps that they are doing what they can to injure their own country. They are of that quality which knows not patriotism and defies wisdom; and the "net is not spread in vain in their sight." The *Times* of 20th October 1896 published the following statistics as to territorial acquisitions by European powers after the beginning of the year 1884:—

	Jan. 1884. Square Miles.	Jan. 1896. Square Miles.	Added Area. Square Miles.
Great Britain ...	8,530,770	11,129,860	2,599,090
France	869,000	3,391,000	2,522,000
Germany	*Nil.*	1,231,740	1,231,740
Belgium	11,370	1,011,370	1,000,000
Italy	110,620	610,620	500,000

No mention was made by the *Times* of the march of Russia, but the "Statistician's Year Book" gives the following Russian statistics for 1896:—

	Square Miles.
European Russia	2,095,504
Asiatic Dominions	6,564,778
	8,660,282

Where is the Anchises whose rapt vision can foresee the outcome of this devouring lust for land—this *terrarum immensa cupido?*

British traders to repine. At the present time the problem of promoting prosperous trade by severe taxation cannot be said to have been worked out satisfactorily in France, where aid to mercantile companies has been accompanied by enormous additions to the national debt, now exceeding, according to M. Leroy Beaulieu, £1,500,000,000. At the same time pre-eminence can be maintained by no other qualities than those which acquired it, and Mr. Chamberlain's sagacious Despatch to Governors (Nov. 1895), requiring them to furnish information, will yield an object lesson of deep import to manufacturers and traders in all parts of the Empire. If the Queen's subjects throughout the world will avail themselves of that lesson, if closer confederation of all parts of the Empire should ensue, the flower of safety may yet be plucked from the nettle of danger. If not, and if indeed the British race have reached their period of decay, no Secretary of State and no warning will avail them.

CHAPTER XXI.

Forestry in Australia, Labour and Social Questions.

There is one subject on which there is little to boast of in any colony except South Australia, and yet there is general conviction as to the duty of each. But the fault is not confined to colonies. The old world suffers for past waste wheresoever the evils of drought have been intensified and made chronic by man. The ancient streams of Greece have shrunk under the barbarism of Roman and of Turk. The "highest plane" under which Phædrus invited Socrates to recline amid the groves of Ilissus, beneath cool air and on fresh grass, has no successor in the arid valley which wasteful barbarism has left behind it. Italy suffered in her turn. The denudation of her forests has within recent historical times plunged extensive tracts of Spain into sterility. The vast continent of India and the minute Madeira have the same tale to tell. Inordinate destruction of native vegetation has been cursed by inexorable consequence of disloyalty to nature. We know, and yet we offend. Generations pay the penalty due to the folly of their forefathers. Rearing her head among the moist airs of the Atlantic, Madeira was clothed with verdure of trees which gave a name to the land when found by the Portuguese. Their carelessness permitted the destruction of the forests, and their successors import timber at great cost for their buildings. In St. Helena the same causes constrain the importation not only of materials for the builder, but of fuel for the hearth. The government of India, through a Forest Department, strives to ameliorate

the climate, and restore the elements which have been marred by the hand of man. While the British Government had control in Australia, there was feeble but ineffectual effort to stay unnecessary waste. The pastoral tenant was nominally prohibited from using the natural timber except for purposes conducive to his calling. In the main, pastoral tenants had no desire to infringe any law, or to traffic in timber. And no market was at hand. But the cedar forests of New South Wales were ruthlessly destroyed by sawyers, who were careless about future generations. Young trees and undergrowth were swept away without regard. Though timber was recognized as a national possession, it was allowed to be taken at random by anyone who chose to pay a nominal sum for a license to cut and remove it from Crown lands. No provision was made for the protection of saplings, or planting young trees to replace the old. Victoria made an effort at improvement. State forests were proclaimed, and licenses (to cut timber in them) were issued, which prohibited the cutting down of trees less than 18 inches in diameter, and strove to prevent waste. But there was little regard for the restrictions.

On slight grounds, an enormous tree, when felled, was abandoned if one apparently more profitable was at hand, although nominally not more than three trees could be felled prior to the cutting or splitting of them for sale. Where licensees had been at work the forest was strewn with trunks of trees destroyed and not put to use. Within fifty miles of Melbourne, and by the side of the road and railway leading to the Mount Alexander goldfields, and thence to the Murray at Echuca, stood the mountain, called after Wentworth by its discoverer, Hamilton Hume, but named Mount Macedon by Sir Thomas Mitchell. Thickly timbered, and having rich undergrowth along the streams which brawled through its sheltered ravines, the mountain attracted moisture, and rendered it back to the air from leaves fed by the perpetually moistened roots, which knew no dryness in the soil guarded by the forest from the beams of the sun. A more melancholy sight than the mountain presented after a few years of licensed devastation could not be seen. That full-grown trees, valuable

for commerce, should be taken away without concomitant return to the State might be borne. The first-comer has a right to the lawful fruits of his labour. But on the mountain side saplings and young trees were rent and crushed in thousands by the dragging or rolling of logs on the way to the pit. Successive generations of trees, produced in previous cycles, were marred without remorse, simply because they were not sufficiently mature to serve the immediate purpose of a licensed sawyer. The ruin of the leafy shelter, which once kept the ground moist and friable, and admitted rain to percolate freely through the soil, entailed a hardening of the surface, and the rapid flowing away of showers when they fell. If heavy rain fell it was unabsorbed as of old by the earth, and rushed over the impermeable surface, sweeping away on lower lands the furrows of the farmer. Thus the misdirected work of man defeated the kindly processes of nature, and entailed alternate afflictions of drought and of flood. Bereft of kindly moisture, which the mountain had received, and rendered back in healthful charity, the springs waned, and sometimes disappeared altogether. The Naiad cannot linger long to weep for the spirits of the grove. One ruthlessness destroys the nymphs of the mountain and the stream. When the forest ceases to respond to the breeze, the murmur of the brook dies away. All whose opinions were of value deplored the waste, but the remedy none could apply. In the local Parliaments a warning voice was raised occasionally, but in vain. Where salaries were given to legislators the comfort of living members seemed more important than the averting of evils from the unborn. A generation would pass away before the full damage would be done, and the danger was too remote to be pressing. That Germany had created a great Department of Forests, and insisted on planting; that France was engaged in repairing the ruin of Alpine and Pyrenean woods, at a cost of hundreds of thousands of pounds, did not interest men bent upon a present use of the Treasury. Their crumenian laboratory was simple. The various chemical, physiological, and mechanical operations by which nature made forests subserve the wants of man were too intricate, and their results too

remote for consideration. The Secretary of State directed the attention of the colonies to the subject. The Indian Government, when applied to, lent the services of one of their officers to New Zealand in 1876, in order that a Forest Department might be created. He reported in 1877. The Waste Lands Boards in some provincial districts had made regulations as to the cutting of trees, but none for replanting. In most of them the existing regulations "were never enforced."[1] Private persons had planted in places. Such a report might be made in Australia. To improve the grass, the scanty timber scattered over millions of acres had been killed by cutting away a ring of bark and leaving the trees to die. The moisture which their lateral roots had drunk was left for the grass, but the delicate functions which the leaves had performed, and the sheltering of the earth, were done away with. No fostering care was displayed by the government. The reservation of State forests, within which continuous destruction was carried on by licensed persons, was the achievement of statesmen in Victoria. A few trees were planted in small patches of land, not to replace ruined forests, but as nurseries from which plants might be distributed.

New South Wales had nothing to distinguish her from Victoria in waste. Sir William Macarthur vainly invited consideration of the forest resources of the colony. When Robertson, in 1861, persuaded the Houses to abandon the providence of a watchful state, and to subject the public domain to pillage rather than to circumspect alienation, the rate of ruin was increased. A dry document prepared by the Director of the Botanic Gardens for an official record of Industrial Progress[2] tells the facts.

"The trees cut down for these (building, public works, exportation) purposes have been small in number compared with those destroyed since the introduction of the system of choosing land by free selection. . . . The soil of all brush-forest country is invariably rich, and whether on the coast or elsewhere it is the first seized on for cultivation, and the destruction of the natural vegetation follows. . . . All must be inevitably

[1] New Zealand Parliamentary Papers, C. 3, p. 45. 1877.

[2] "The Industrial Progress of New South Wales, being a Report of the Intercolonial Exhibition of 1870, at Sydney." Govt. Printing Office. 1870.

destroyed unless the government take steps to prevent it. . . . The country generally is now being so rapidly disforested . . . that there is every probability that (these) and a vast number of equally valuable trees will soon be entirely lost. For commercial, industrial, climatic, and other reasons, the destruction of these forests is greatly to be deplored, but it is unavoidable."

Thus when "sick in fortune" (often the surfeit of their own behaviour) men plead that they are "fools by heavenly compulsion."

Queensland, the latest to assume a separate government, and with vast virgin territory to occupy, was more intent upon consuming natural products than in providing for their renewal in the form of forests, but has now a Department of Agriculture, to which State nurseries and a forest nursery are attached.

Western Australia has hitherto been more busy in the destroying than in protecting forests, but has made regulations under which licenses to cut timber on Crown lands are obtained on payment. Her Jarrah (*Eucalyptus marginata*) and her Sandalwood (*Santalum cygnorum*) furnished valuable exports[3] in her seasons of adversity; and under wise regulations may continue to be profitable.

South Australia displayed some energy. Destitute of forest wealth, which the mountain chain on the east conferred upon Queensland, New South Wales, and Victoria, she strove to construct while others destroyed. Of the hardy eucalyptus, of which 134 species were known in Australia, only 30 were indigenous in South Australia; of the acacia genus, of which 300 species were known in the continent, only 70 were found in her territory. The specimens she possessed were diminutive, as well as few, compared to the products of the cordillera in the east. As early as 1873 she passed a law "to encourage the planting of forest trees." She gave land orders available as cash at land sales by persons who had planted not less than five acres with forest trees. Pastoral tenants were encouraged in the good work by compensation for planting (not less than twenty acres). In 1875 a Forest Board was constituted. Forest reserves were created in the northern,

[3] In 1891 the exports of Jarrah were £89,000, and of Sandalwood they were £38,000. In 1894 the exports were:—Timber, £74,800; Sandalwood, £23,000.

southern, central, and western districts. Travelling stock reserves were also formed, and on them, as well as on the forest reserves, the Board was empowered to plant. It could obtain revenue by judicious sale of mature trees, and from persons depasturing stock on the reserves.

In 1880 the colonists saw some fruit of their labour. The easy process of "natural regeneration" (as the Board styled it) had restored much to the land. Land trampled upon by live stock cannot put forth its native woods. Even if the young leaves be not browsed upon, the tender shoot is trodden down. The mere fencing of a plot on private estates enables the recuperative energy of nature to adorn an enclosure with young groves. Shoots from old roots, seeds scattered in former time, germinate and sprout unhurt. Of this energy the South Australian Board availed itself, and 80,000 useful specimens rewarded its care in 1880. It had about 240,000 acres under its control. It reported, moreover, that about 265,000 young trees, planted or sown, had been established, and 238,800 trees were planted on the reserves in the season of 1880-81. The Forest Board obtained revenue from pasturage leases and from sale of timber. The receipts in 1880 were £6049. The expenditure was only £5295. The example of the State won the attention of colonists; and, if followed by many, may modify the arid climate, and spread blessings upon the land.[4]

There have long been public (called Botanic) gardens in the chief cities of Australia, and occasionally in other populous towns. By their means, with aid from the Royal Gardens at Kew,[5] and by advice and interchange of plants, much might be achieved.

A Blue-book on colonial timber was presented to Parliament in 1878; and at the Colonial Institute in London in 1880 Sir Joseph Hooker enforced with earnest words the

[4] A statement made by Mr. Gill, the Conservator of Forests, shows that in fourteen years ending in 1895, 15,253 persons received 3,870,614 trees from the South Australian Department, and 1,118,877 vines were distributed to 4363 persons. *Australasian* newspaper, 30th May 1896.

[5] Thus India derived assistance in introducing the Cinchona. Thus Ceylon and Jamaica obtained the same plant. The colonies have it in their power, and there is no lack of will, to render returns to Kew in the shape of local flora.

necessity for checking the "waste of Nature's beneficent gifts."

A comparative statistical analysis has been given with regard to the year 1856 in a former chapter,[6] and statistics of a later date will be found in an appendix. In disposing of the public treasure—the land—the avowed object in more than one colony was to squander the land. In one a minister admitted that prospects of free-selectors were gloomy, and that he could devise no remedy except borrowing money "to assist the selectors to remain on their land." Some persons, out of mere pity for struggling farmers, advocated the construction of irrigation-works, not on a self-sustaining basis, but as a gift. Arguments that selection and farming pursued in defiance of economic laws could not redound to the advantage of the selectors or of the country were contemned by supporters of "free selection before survey;" and it remained to be seen whether the dispensing with Wakefield's "sufficient price," or with value ascertained by auction, would result in the manner foretold by him or in the manner expected by its advocates. It is undeniable that an infinitesimal royalty on gold, and sale of land at "sufficient price," would have provided funds for construction of railways and public works, and that building them with borrowed money imposed heavy taxation to meet interest on loans. The supporters of rapid alienation of land without regard to price contended that a community settled on the land could not fail to prosper and furnish ample revenue; and that the railway receipts would make the public debt only nominal, inasmuch as the government would receive them with one hand and pay interest on the debt with the other. Both these contentions have been falsified, and wanton and inordinate debts have brought about concomitant results in taxation.

In 1896 it was estimated that the cumulated deficiencies of the years 1890 to 1895-6 in working the railways in Victoria amounted to £3,220,000. There had been other extravagance, and a mania for prohibitive legislation (commenced under McCulloch and riotous under Mr. Graham Berry in later years) had brought such consternation into the ranks of the supporters of protection that in dismay

[6] Vol. ii., pp. 686-688.

they consented to reduce duties on some articles to 25 per cent. Concomitantly, however, an Income Tax, based on the denial of equity which characterized Sir W. Harcourt's measures for extorting larger proportionate payments from one class than from another, was resorted to.

But still the heritage of woe accruing from the wanton waste of the public treasure—the land—clung to the country, and the load of debt, needlessly contracted by the foolish, had to be borne by the industrious. The talent and energy of the industrious might indeed do much to retrieve the fortunes of the State if it were not impeded by empirical legislation framed purposely to intercept the rewards of intelligence.

The claims of those who call themselves Socialists, yet seek to destroy society, and confiscate what Mr. Mallock calls the "profits of sagacity," have not yet been formulated into law in any southern colony, although in New Zealand[7] the ministry now in existence has made perilous strides in the direction of misrule.

Doubtless there are many advocates of wild theories who honestly believe in their sobriety, but such advocates are not the men who guide movements when passions have been aroused. The history of "strikes," which have brought misery upon thousands of homes, bears melancholy witness to this fact.

When the discovery of gold convulsed the labour markets of Australia, and wages were supposed to bear some relation to the average profits which a labourer might acquire by digging for gold (the question of profit or loss to the employer being unconsidered), it seemed good after a time to mark the triumph of the labourer. Not many years elapsed before trades' unions and leagues resolved to limi

[7] In 1894 the then "great toe of New Zealand" (Mr. Seddon, the leader of the ministry) when confronted by precedents in other countries, replied —"The New Zealand Parliament is considerably in advance of other Parliaments, and I myself do not lay much stress upon precedents, or upon what occurs elsewhere." One feature in the "advance" of Mr. Seddon is to present estimates showing a credit balance for the year, to dally with sinking funds, and to ask for large loans in the same session, and thus postpone the hour *in vacuum venire*. He is confident that his supporters are not wiser than himself. ("I, the great toe. Why the great toe?" "For that being one of the lowest, basest . . . thou still goest foremost."—*Shakspeare.*)

he hours of labour. Eight hours were fixed as the limit, which seemed a term open to no objection on economic or ealthful grounds. Annual processions and festivities were eld to commemorate the triumph. The paradise of the orking-man seemed to have been attained.

But the regulators of discontent are not workers[8], but lotters behind the scenes, who control what is known as he "machine," or the "caucus." Contentment of workers vould deprive such plotters of affluence, influence, and ower of mischief. They are parasites who thrive on the iscontentment of others. A community living throughout n Christian charity would afford no scope for them. Therefore they cultivate discontent. If there be no pressure n one country, events in another may be used to create nrest; and by a mischievous alchemy the kindly feelings f men can be made to embitter strife.

Thus the workmen of Australia (and some other misnformed persons there) contributed largely to a fund to ssist the "strikers" in London in 1889, imagining that hey were relieving distress, while they promoted a conspiracy injurious to labourers and profitable only to its rompters.[9]

Ere long the process was reversed, and dockers' and ther unions, councils, and committees remitted large sums f money from England to support strikers in Australia,

[8] It may not be out of place to mention that the naturally kind disposition of the workers is railed at by Socialistic plotters. Let anyone ask himself how often he has seen among the unprompted workers themselves any tendency to the tenets of their inhuman dictators. Pass by a number of workmen on the roadside or at a railway, or at a building in Great Britain, and if you hear their conversation you will find it for the most part kindly, good-humoured, and sometimes witty. The same may be said of Italians in Rome, Florence, and Lombardy, and of many Frenchmen. Notably, the author has remarked the same amiable characteristics amongst the Japanese in 1862, and amongst the Chinese in 1848 and 1862, with the exception as to China of members of secret societies, who may be regarded as types of the instigators of the Sheffield "ratteners," whose atrocities (under the guise of trade unionists) were exposed in 1867. Many observant friends of the author have concurred with him in thinking that the honest bulk of the labouring classes is libelled by those who impute to them the savageries enforced by unseen counsellors.

[9] One acknowledged result of the dockers' strike was that certain forms of industry were banished to other seaports.

where Trades' Hall speakers and representatives of unio
had determined to cause simultaneous strikes.

How slight a pretext may be put forward when men ha
resolved to act was shown when, because a shipping co
pany was about to remove an officer from one vessel
another, a general strike was commenced, there being lir
of sympathy between a Marine Officers' Union[10] and
Melbourne Trades' Hall. The contest raged from the mi
at Broken Hill to the far north in Queensland.

Shearers' unions had been in existence for some yea
before the strife of 1890 threatened to put an end to shea
ing. At that time it was estimated that during the shea
ing season about 50,000 shearers and other labourers we
employed, and the earnings of the shearers themselv
were computed at from £4 to £5 10s. per man per week.

In May 1890 an "Australian Labour Federation" a
nounced that, in order to strengthen the demands
union shearers in Queensland, the shipment of wool sho
by free shearers would be blocked by the waterside unio

Thereupon a conference was held at Brisbane, between
"Darling Downs Sheepowners' Association" and
"Australian Labour Federation," at which it was arrang
that the "unionist" demands should be acceded to.
Pastoralists' Union of New South Wales was then forme
and determined at its first meeting (14th July 1890) to
present to an "Amalgamated Shearers' Union" that t
announced intention of that body "to prevent the shi
ment of non-union shorn wool" would conflict with co
tracts previously made between free or non-union shearer
that such contracts could not be broken by the employe
but that the Pastoralists' Union were willing to confer
to future arrangements.

The Amalgamated Shearers' Union rejected such ove
tures. It had issued[11] an appeal calling on its supporte

[10] In January 1897 an "Australasian Institution of Marine Engineer
in Melbourne, initiated a dispute which was called a shipping strike, a
which lasted only a few days.

[11] A manifesto issued by the Amalgamated Shearers' Union said
"We intend to teach the squatter the folly of resistance to our combi
tion. He shall not be allowed to shear his wool except by union labo
But if he should succeed in getting the wool off the sheep's back it n
rot in his hands, for we shall prevent the carriers taking it to the railw

o draw such a cordon of unionism around the Australian ntinent as will effectually prevent a bale of wool leaving less shorn by union shearers."

Such undisguised tyranny, so reckless of the welfare of dupes, produced its natural results. Employers banded emselves in self-defence. They contended for "free bour," and the mere term "free labour" seemed to con-mn its opponents.

It was not, however, until movements of ships had been rested, till volunteers had through crowded streets con-ucted wool drays to the wharves, till coal pits had been osed, till it had been attempted to plunge Melbourne into rkness by a strike affecting the gas works, till armed nds had been organised to intimidate "free men," till vernments had made arrangements to protect liberty by rce if necessary, that order was restored and "freedom of ntract" triumphed.

The so-called "maritime strike" in August 1890 was ded by organisations on land, and unionists engaged in earing received orders to cease to work. Some obeyed, nd ensuing legal proceedings proved that the orders were legal.

Driven to combination, pastoralists' unions formed Sydney (in Dec. 1890) a federation of pastoralists' nions, with a federal council. A form of agreement, epared by the pastoral federation, for shearing require-ents, was rejected by unionist shearers in Queensland in nuary 1891, on the ground that it contemplated the right free men to sign it and to work with them. After allow-g a fortnight for consideration, the United Pastoralists' ssociation of Queensland called for free labour from ictoria, and steamers conveyed shearers from that colony Queensland, whither also some volunteers travelled over-nd from New South Wales. Savage devices were resorted against them. Attempts were made to wreck railway ains; bands of armed men roamed through the country, urning and wrecking the property of settlers; on one occa-

nd should he succeed in getting it to the railway we shall prevent its ing stored on board ship, for we shall call out the wharf labourers; and stowed we shall prevent its going to sea, for we shall call out the sailors d the officers; and if it sails we shall prevent its discharge in London, r we shall call out the dock labourers."

sion two hundred such rioters surrounded the offices of th United Pastoralists' Association, goading them, and a armed revolution was loudly threatened. Collision whic seemed imminent was averted only by the wise composur of the officers of the Pastoralists' Association, and of th Queensland Government, which took measures to prote life and property and quell disorder. Shearing was pr secuted meanwhile by means of free labour, and aft commotion continued through five months the Australia Labour Federation gave up the struggle, and permitted the dupes to find work for themselves.

In June 1891, as the shearing season in the interior New South Wales approached, preparations were made b the Pastoralists' Unions to meet their difficulties by enga ing thousands of free labourers.

A conference was advocated by many persons not en broiled in the contest, and the Pastoralists' Union urge that until the Amalgamated Shearers' Union abandone their demand that only unionist shearers should be em ployed, no settlement could be attained. Some spirit compromise was evinced by a proposition in the Trades ar Labour Council, that the Amalgamated Shearers' Unio should be requested, "for this season's shearing," to "offe no opposition to their members working with non-unio men in the different sheds." But the proposition wa rejected in the Trades and Labour Council.

Shearing was nevertheless carried on by means of "fre men" despatched from Sydney and Melbourne to th interior.

The position of the Pastoralists' Federal Council wa summed up thus:—"That an employer is to be free t employ whom he pleases, and an employee is to be free t engage or to refuse to engage to work, as he pleases."

The first concession to this principle was characterist cally made by one of the controllers of the Amalgamate Shearers' Union, by which working men were forbidden permitted to receive wages when offered to them:—" concede that members of this union may work with no members."

This was in New South Wales. Almost simultaneous (23rd July 1891) in South Australia, delegates from th

Pastoralists' Union in South Australia, and from the Amalgamated Shearers' Union in the same colony, agreed (29th July) ("as a preliminary to a conference") "that employers or shearers shall employ or accept labour whether belonging to shearers' or other unions or not, without favour, molestation, or intimidation on either side."

On the 7th August a declaration of like import was agreed to in Sydney between delegates of the Pastoralists' Federal Council and the Amalgamated Shearers' Union, and they who had been slaves of the union became free men.

It may be well to mention that in Queensland Sir S. W. Griffith was the Prime Minister and Attorney-General during the turmoil of the strikes in 1890 and 1891, Sir T. M'Ilwraith being Treasurer.

When Sir Samuel Griffith became Chief Justice in March 1893, one of his colleagues, Sir T. M'Ilwraith, reconstructed the ministry, which contained as Colonial Secretary Mr. Tozer, and as Attorney-General Mr. Byrnes, who had been members of the Griffith ministry. It contained also Mr. (now Sir) H. M. Nelson, who was to take a leading part in it, and (on the retirement of Sir T. M'Ilwraith in March 1895) to form a ministry known as the Nelson ministry.[12]

There was therefore some continuity in the government throughout the period of the strikes commented upon.

The eminent risk of collision between roving bands of armed "strikers" and officers of the law, aided by volunteers, could not but press itself on the attention of the government, and in September 1894 Mr. Nelson passed a Peace Preservation Act, the effects of which were declared by many persons to be prompt and far-reaching.

[12] In 1896, Mr. Tozer, the Queensland minister, was on a tour with Mr. Reid, the Prime Minister of New South Wales. They were at Adelaide, and about to visit the Broken Hill silver mines. One of the "Labour members" of New South Wales was in the party. He scented danger if Mr. Reid should be accompanied at Broken Hill by a Queensland minister who had been connected with the maintenance of law in Queensland during the shearers' strike. There were interviews. The rites of hospitality succumbed to the imperious necessity of pacifying the "Labour members," and Mr. Tozer was informed that he could not go to Broken Hill with the ministerial party. He did not go with it, but as his views about liberty and hospitality differed from those of his errant hosts he published the facts.

But evil passions are more easily excited than allayed; and in 1895, though the shearing season passed off without disorder, the poisoning of a number of peaceful men excited horror.[13]

To such base uses may men be reduced when they have submitted themselves to the control of organizations which work in the dark. So easy is it for plotters to seduce their followers to commit acts at which those supporters would have shuddered if left to their own humane impulses.

It may be said, and truly said, that among those who control a cruel organization there are some who at the inception of their career have no base or inhuman motive. Great expectations were once founded upon the character of Nero, who died young, and yet had been so corrupted by power that his object seemed to be "*virtutem ipsam exscindere.*"

Enthusiasm may itself run mad. One of the "labour leaders" in Queensland, named Lane, did not lose confidence in himself. He had edited a Queensland newspaper, in which he propounded his socialistic remedies for the ills of the world generally and of Queensland in particular.

When the strikes came to an end there he still found dupes. He may have duped himself, and in 1893 he sailed to found a new colony in Paraguay, where the government were willing to grant[14] land on which he was to found a

[13] "Whether it was the outcome of vengeful feeling arising out of previous strike troubles we know not, but about the middle of July a dastardly atrocity was committed at Bowen Downs Station. Fifty-seven men were poisoned by strychnine being put in their food; one died; many of the others suffered fearful agonies. . . . The affair was shrouded in a good deal of mystery. A reward of £2000 offered by the government was supplemented by £500 from the owners of the station. . . . On 11th February the Aramac woolshed was burnt down, and attempts to fire others were reported."—("Pugh's Almanac," Queensland, 1896.) On one occasion a steamer was burnt by rioters on a river in New South Wales, and the burning of woolsheds was frequently attempted—sometimes successfully.

[14] The grant, or concession, was 310,000 acres, free from rent, and free from all taxes and import or export duties for ten years, on condition that by the end of six years 1200 families, consisting of 4000 to 6000 people should be introduced. When Lane quarrelled with his flock and decamped, other chairmen floundered through their difficulties. In 1896 an article in the *Times* (14th April) declared that the colonizers did not then "number more than 200, and will be unable to fulfil their part of the original contract, but the government are willing to release them from

"socialistic-communistic-co-operative community." Each communist was to carry at least sixty pounds sterling of old-world money with him.

The ringleader rendered some homage to human necessities by framing rules for the association, by obtaining recognition as *Juez de Paz* from the government, and by registering "New Australia" as a joint-stock company, in which he held numerous proxies.

The would-be regenerator of Queensland was to be the creator of Paraguayan perfection. Alas! the philosopher of Ardennes had almost prophesied the result:—"You I bequeath to wrangling, for thy loving voyage is but for two months victualled."

There was wrangling on the voyage from Australia; there was wrangling when the new haven was attained. The leader seceded to try again elsewhere. Most of his dupes escaped, as with their skins, to Australia and other places.[16] The "great toe" of Queensland had proved the value of its possessor's head in Paraguay.

this, and to grant them instead the Lowry estate, on which their five present settlements are made. This estate comprises some 130,000 acres. . . . The fowls (1500) are, however, private property, though the original plan contemplated communism in every sort of live stock. . . . The money of the community has been extravagantly spent, and the people have been living on capital instead of earning income. . . . Nearly all the discontented and incapable members have taken themselves off." As lately as January 1897 it was recorded in the press that "urgent appeals" besought the Queensland government to assist some of the Paraguay colonists to "return to their former homes in Queensland." One of the applicants had a wife and eleven children. The Queensland government at once took measures for the relief of the distressed runaways, who had deserted the colony as capitalists and sighed to return to it as paupers.

[16] An associate who had a sick child saw an Indian passing by with milk. The father, who had no other means of obtaining the milk for his child, exchanged his razor for milk. A communistic neighbour reported the transaction to Lane. The unswallowed portion of milk was at once confiscated, on the ground that by the rules of New Australia the culprit was not entitled to a private razor. Under such circumstances it is easy to see why peace in New Australia did not last three months. This was in 1893. A South American journal, *El Pueblo*, reported, March 1895:—"We all know what has occurred with the Australian colony founded near Ajos. Never had a colony been planted under better conditions or more favourable prospects. The colonists were not poor people; each had invested a certain amount of capital in the enterprise. Large sums had been expended by the government. And now, as a result of all these sacrifices, there does not remain on the site of its foundation more than a

Adversity sternly teaches those who run riot in prosperity. The high rates of wages caused by the discovery of gold in 1851 restrained many forms of enterprise, for years, throughout Australia. Financial disasters in 1893 taught all classes that arbitrary attempts to fix rates of wages without regard to economic results were doomed to perish. In 1893 numerous commercial and banking failures, following a period of wild speculation, proved to all classes that labourers desirous to work would have to accept wages which employers could hope to pay. By yielding to this necessity new articles of export were produced under the "rigid lore" of adversity. Wages were accepted by upright labourers who refused to obey the dictation of interested promoters of "strikes."

For a time the influence of those promoters suffered eclipse, and the honest labourers, who happily form the bulk of their class, recognized the inexorable law which forbids the endurance of occupations incapable of yielding due maintenance of labourers, and some return for invention, enterprise, and capital. Enterprise crushed in one country must flee to another; and no class capable of flight to a freer air will submit to pillage.

Yet, though for a time foiled by facts, the influence of promoters of unreasonable strikes cannot be looked upon as extinguished. The spread of socialistic ideas which troubled many ancient civilizations, but have only recently brought disturbers in one country into close relations with those of another, has, aided by wide degradation of political suffrage, created a class of so-called leaders of the people, who tell them that not knowledge but passion should govern, and in effect, if not in words, that the proper recompense of industry and talent is confiscation of their earnings, and annihilation by class legislation of the natural differences between man and man.

They poison the principle of representation in Parliament, and demand that members shall sit there not to represent the whole people, but special combinations. They would convert the representatives of a people into

mere fraction of the colony—a handful of immigrants, who drag out a miserable life without hopes of bettering themselves, and almost with the certainty that all their hopes and plans will vanish in smoke."

delegates of a class sent to wreak vengeance upon others, and ready, like some ancient malefactors, to glory in that which is their shame.

Hitherto, however, the main current of legislation has tolerated the existence of institutions established in accordance with European usage for the convenience of those who, by industry and intelligence, maintain the state of the world.

A touching tribute to past experience and research may be noticed when anarchical ringleaders or wire pullers are assailed by any of the "natural ills which flesh is heir to."[17] As to complicated problems which abound in the social organism, they despise the authority of the learned and the teachings of history. But when their own frames are disordered they resort not to empirics like themselves, but to physicians trained in the wisdom of the past.

Some, of course, are crazy enough to resort to impostors. There is a reflected justice in the miseries they may then undergo. For the evils which their own efforts inflict upon the body politic, there can be but the tardy remedy which may follow repentance.

Whence that remedy may come, no philosopher dares to predict. Herbert Spencer, in his latest work, deplores existing conditions as "a state in which no man can do what he likes, but every man must do what he is told. An entire loss of freedom will thus be the fate of those who do not deserve the freedom they possess."[18] A greater philosopher was able to convince all whom he catechized. But his wisdom was too true to be popular, and Socrates was silenced by a death which left an ineffaceable stain on the country which abandoned him. It could not extinguish him; he lives in the minds of a larger multitude than was known to his contemporaries, and he

[17] The "Quarterly Review" of October 1896 records the fate of a continental anarchist who, born in 1844, instructed the world in 1881, was in 1889 recognized as mad, and in the following year was confined as a lunatic. "He has paid (said the Reviewer) with his intellect for his heterodoxy." In other words, the Christian community which he had assailed extended charity to his madness.

[18] Under the terms of a Shops and Factory Act a poor man was fined in 1897, in an Australian colony, for ironing with his own hands, on his own premises, a shirt urgently demanded by its owner, who was about to make a journey. Such are the triumphs of what is called labour-legislation.

knew that he went to a better future, *αμείνον πράγμα* than his persecutors permitted him to find in Athens.

It is melancholy to think that the self-constituted spokesmen for humanity can propound no better future for it than a loss of freedom.

Sin against natural laws begets disaster; thence arises confusion, and violence springs up to remedy evils which are deemed intolerable.

The only consolation which the lover of his fellow-creatures can derive from the study of their history is that, in the turmoil of secular change and trouble, myriads of them have within the last 2000 years derived enduring comfort from the Word which, if all would receive it, would lighten their troubles on earth, and wing them with hope and joy to that nobler future of which the greatest of Athenians was a prophet. The multitude which demands wonders must, in the material world, demand them in vain. In the spiritual world, nevertheless, where that Word has prevailed, lives of men of all degree have continually shown miracles wrought by Christianity which have shed equal blessings upon rich and poor. It is sad that the nobler future of mankind is not an object of care with those empirics who now put themselves forward as redeemers of their brethren.

For many years the operations of banking companies in Australia were deemed highly prosperous. The financial crisis of 1843, which brought down one bank irretrievably, was followed by prosperity, and large premiums were paid for bank stock for many years. The number of banks was inordinately increased, and in order to attract business there was a lack of prudence in some institutions. A wild spirit of speculation seized upon the public. Large remittances were drawn from England to promote operations. The price of land was raised to rates incompatible with prudence. Syndicates were formed to purchase properties with a view to immediate resale. The unwholesome fever of speculation was mistaken for constitutional strength. Numerous bankruptcies in 1891 were ominous of the truth. Excluding New Zealand there were nearly 2470 sequestrations, representing £3,162,126. There were in 1892 twenty-five banks operating in Australasia. They held deposits,

bearing interest, £83,715,744; not bearing interest, £28,687,780.[19] In 1893 several banks closed their doors; unreasoning panic prevailed; well-ordered institutions were foolishly distrusted; and thirteen of the twenty-five banks ceased to do business, though several of them were promptly reconstructed, the schemes for reconstruction involving calls exceeding £6,000,000.[20] The misery brought upon families which had held shares as investments, and not for speculative purposes, was widespread, and caused further troubles, borne by the communities in a manner which extorted general admiration. When the banks closed they owed to the public about £91,000,000, having, of course, assets which, at their stated values, were sufficient to meet all liabilities. But stated values computed in time of inflation melt to small dimensions when sought to be realised in time of distress, and panic adds new and incalculable elements to the general calamity. To stem the course of the panic the Government of Victoria proclaimed (5th May 1893) five consecutive bank holidays, hoping thus to allow reason to resume control, but some of the banks did not avail themselves of the right to close their doors. Two days before this proclamation, the Sydney Government passed a Bank Issue Act, making bank notes a first charge on assets, and empowering the government to guarantee them. In Queensland, the government took measures to enable the Queensland National Bank to meet the abnormal strain put upon its resources in 1893, but further measures of relief were required in 1896, and re-arrangements were not concluded in that year. The effect of the crisis could not be said to have passed away in 1896, and the colonies which have most unreasonably wasted their land resources, must labour longest under the effect of the mingled disaster and panic of 1893.

As early as 1818 there was a savings bank in Sydney, and in 1832 a board [of which the Governor (Bourke) was president, and on which the names of Wentworth and Deas Thomson appeared] was created by law. The commercial distress of 1842-3 threatened the bank with ruin. For two days there was a run upon it, and though the amount withdrawn (£22,666) was small, it was, at that disastrous time,

[19] Coghlan's "Seven Colonies of Australasia." 1893. p. 365.
[20] "Victorian Year Book." 1893. Vol. II., p. 463.

important. More than 1800 depositors deserted the institution in 1843. Some needed their savings to drive poverty from their doors; others were swayed by panic and distrust. The government prohibited the discounting of bills, and restrained the investments to government securities and mortgages. Confidence was slowly restored, but it was not until 1851 that the business of the bank exceeded the bills which it had been in 1842. The careful Deas Thomson, 1853 succeeded in amending and consolidating the Act relating to it, and the even tenour of success has never since been disturbed. The Savings Banks' deposits in 1891 in Australia and Tasmania exceeded twenty-one millions sterling.

Kindred institutions—building societies (or, as they are more suitably, with more accurate description, called, terminable order)—have converted many millions annually into happy homes, bought or built, and added to the wealth of time by means of the savings of the industrious classes. Formerly, the more enterprising persons invested in building societies, and the timid in the savings' banks. Although the Act limited the amount of interest allowed by law in the latter was low, societies were numerous.

Prudence displayed in private affairs is not always reflected in public expenditure. Revenues derived from the sale of lands, and facility in borrowing upon them, are temptations to ministers and parliaments; and the boundary between the good of the community and the cravings of representatives or delegates is not always regarded with strictness. Nevertheless, loans have provided works which facilitate commerce, minister to public wants, and, by economising time, practically extend the life of man. The expansive power of active people in newly-occupied territory sometimes defies misgovernment which would be fatal to industry in older societies. Where fresh channels are almost invariably opened by force of circumstances, enterprise may be retarded but can only be crushed by subjecting it to tyranny, whether of one man or of many. If Australian governments had not squandered their lands they could have failed to be wealthy, and, as a natural consequence, taxation would have been light and enterprise unimpeded. The aggregate revenues of the Australian colonies exceed £26,000,000 in 1891.[21]

[21] "Victorian Year Book." 1893. Vol I., p. 149.

Though Australian communities could readily pay for luxuries, they have occasionally asked alms from the State. It was deemed liberal to crave that newspapers should be carried without charge. In many rural places letters could be transported at trifling expense, but the bulk of newspapers augmented the cost of the service, and it was demanded that even at great loss newspapers should be carried. Each editor was convinced that only by free course for his lucubrations could the country prosper. Members of Parliament joined in the popular chorus.[22] That it was not the duty of the State to waste money is too prosaic a maxim to be heeded, when it seems the interest of a considerable section to profit at the expense of others. Contrasts which vex communities are found in private life. A prodigal who pays no honest debt, but squanders much with open hand, often enjoys a higher reputation than he who toils faithfully to pay every just debt, and has no remainder for waste. Public reputation is often acquired in like manner.

In Australia, amongst all classes, proofs of comfort abound. Wages of artisans and of unskilled labour have ever been high, and the superflux in many homes probably exceeded what would have been deemed luxury in Europe. Places of amusement and holiday processions testify to the means of enjoyment; and believers in the perfectibility of human nature might sigh in acknowledging how large a portion of the leisure procured by shortening the hours of labour is expended on sights, shows, and dissipation. Even after the financial disasters of 1893 visitors observed with amazement the large and joyous crowds which frequented places of amusement.

Travellers in Australian colonies have remarked that English life is repeated more fully there than elsewhere abroad. Field sports are popular. In all athletic exercises every colony can furnish proficients. The rare excellence of the climate gives facility for outdoor pursuits, and in the cricket field and elsewhere the youth of Australia have proved their prowess.

[22] "The total expenditure, £690,000, of the Post and Telegraph Department (in Victoria) exceeded the revenue by £122,000 in 1891."—(Hayter's "Victorian Year Book." 1893.)

Variety of pursuits does not necessarily make different the habits of homes. Landed possessions, mines, and commercial enterprise sustain the wealthy everywhere, but the conditions of climate enable the grazier in Australia, when fortunate, to become rich by the gifts of God, without exertion in raising crops of grass. Except as to long successions of inheritance, the holders of property in Australia are like their cousins in England.

There is one product of sunny lands which England cannot know, except by importation. The fruit of the vine attains perfection in the South. It is the belief of most colonists that Australia will produce good wine abundantly, and skilled judges abroad have so commended specimens of Australian vintage that there can be no doubt that the most favourable anticipations will be realized when time and experience shall have tested results, and so trained vine-dressers and wine-pressers that the product of each year shall be alike. The culture of the vine is, however, costly; and many years elapse before the yield is at its best. Only capitalists can await a long-deferred return for their money.[23]

The kindliness of nature induced early efforts to systematize the introduction of animals. The imported thrush and blackbird make musical the groves of Australia, and the European skylark already pours his profuse song in New Zealand, where there is more ground shelter, and there are fewer falcons and kites than in Australia. The introduction of the trout was accomplished at a comparatively early period, while, with the aid of ice, strenuous efforts were made to give a new home to the salmon.

More detailed examination of statistics in the text is needless. An appendix will furnish figures which prove

[23] In 1895 the acres under vine culture and wine made were stated to be—

	Acres.	Gallons.
In New South Wales	7,519	211,510
In Victoria	30,365	340,846
In Queensland	2,021	29,251
In South Australia	17,418	196,320
In Western Australia	2,217	42,186

Fuller information will be found in the valuable Statistical Tables in the Appendix to this volume. For them the author can claim no credit, as they are wholly compiled from figures published by the Statistical Department of Victoria.

the importance of communities rising in the Southern hemisphere to assume the form which, wittingly or unwittingly, England's colonization has tended to develop. None of them enjoy what Wentworth laboured to secure—the social grace and nobleness of motive with which an hereditary order adorns a nation, for whose worthiest sons an entrance into that order is an object of patriotic ambition, binding together the futures of their families and of their country. The colonies lack the security which honours permanently acquired carry with them, and which has caused reverence for ancestry to pass into a proverb as constraining to noble deeds.

Unworthy exceptions have no power to destroy a rule based upon one of the deepest feelings of the heart. Those feelings it has pleased the Colonial Office to neglect. Instead of conferring hereditary distinctions on honoured families attached to the soil by ties which cannot be broken, Secretaries of State have bestowed ephemeral favours on fawners upon themselves or bidders for fleeting popularity. Noble masters of ceremonies flattered the vanity of clients, whose brief decorations die with them; but little has been done for the enduring welfare of the communities sprung from the loins of Englishmen, and entitled to all that an Englishman can claim. For a British community bereft of the grace which adorns the social structure, and ennobles the aspirations of public men, there was room for growth only in one direction.

The representative principle, once implanted, struck deeply into the soil, and enclasped with its branches everything above it. Moreover, the root of the old principle of representation has become worm-eaten in Englaud as well as in the colonies. It was a representation of localities, not of population, and required not that all should have equal power in making laws, but that those who contributed substantially to maintain the State, should be represented in the Parliament which levied imposts and appropriated the public treasure. Equal justice to all was guaranteed by the Great Charter, but general legislation was for a long time deemed the function of the provident and the wise.

The ancient principle was the assembling of representatives of the industry and intelligence of the nation. The

new theory, if theory it can be called, is to subject legislation to the unreasoning clamour of a crowd. Historically, Bishop Stubbs in his "Constitutional History" has traced the principles which were at the root of English representation. By the resultant of many forces, and not by the domination of one, evil was avoided, even if immediate good was postponed until maturer counsels could prevail. Members represented their country, and not merely their parish or a predominant section within it. Pitt, a hundred years ago, drew a picture of the evils resulting from representation of mere numbers in passing laws.

"In the history of this country the number of electors has always been few in proportion to that of the great body of the people . . . The same principle which claims individual suffrage and affirms that every man has an equal right to a share in the representation is that which serves as the basis of that declaration of rights on which the French legislators have founded their government. . . . If it were possible for an Englishman to forget his attachment to the constitution . . . he would find the principle of individual will powerful and efficient for the destruction of every individual and of every community, but for every good purpose null and void. . . . The government which adopts such principles ceases to be a government, it unties the bands which knit together society, it forfeits the reverence and obedience of its subjects, it gives up those whom it ought to protect to the daggers of the Marseillese, and the assassins of Paris. Under a pretence of centering all authority in the will of the many, it establishes the worst form of despotism . . . In what is called the government of the multitude, they are not the many who govern the few, but the few who govern the many. It is a species of tyranny which adds insult to the wretchedness of its subjects by styling its own arbitrary decrees the voice of the people, and sanctioning its acts of oppression and cruelty under pretence of the national will."

One of the wisest men of the nineteenth century, Sir H. Maine, declared that the principles on which the British Constitution was founded "diminished the difficulties of popular government in exact proportion to the diminution of the number of persons who had to decide public questions." The form of evils to come would be, he said, that form of bribery or corruption which consists in "legislating away the property of one class and transferring it to another."

Misery is in store for the country which realizes Maine's prediction. "Partial inequitable taxation (Mr. Lecky says) introduced for the purpose of obtaining votes, is an evil which in democratic societies is but too likely to increase."[24]

[21] "Democracy and Liberty." Vol. I., p. 129.

Claims for extension of the suffrage in the United Kingdom and in British colonies were for a long time largely based on the equity of the principle that there ought not to be "taxation without representation." Those who made such claims and were amenable to reason could not fail to see that the converse principle of "representation without taxation" is a condemnation of their former claims, and calculated to lead to confusion and disasters which, after paralyzing the body politic at home, will render it weak and contemptible abroad. It is true, though sometimes forgotten, that money affairs do not comprise all that affects the welfare of mankind; but it is no less true that in all English-speaking communities the principles enshrined in the Great Charter have for centuries safeguarded the life and liberty of all subjects of the Crown. Therefore, there is in such communities the less reason for degrading representation in Parliament under the hallucination that the more it represents ignorance the safer will be the interests, the honour, and the lives of the people.

It is almost pathetic to watch the effect upon communities of the haphazard experiments they make in degradation of the suffrage. Like drunkards, who are conscious that all is not well within them, they cry for more of the poison which has unseated their reason. Each successive draught was to make them victorious over all ills, but each has increased their tremor, and in sheer delirium they crave more. When they have dethroned wisdom in assemblies elected by universal suffrage of men, and find that still there is something rotten in the State, they call for universal suffrage of women, and Mænads are not wanting to inspire disciples of the new cult. The judicious may grieve, the ministering angels of Christian societies may shrink from the proffered boon, but it is not to obtain their votes that agitation is set on foot. It aims at securing what it calls the mass-vote of women, as it has in great part secured that of the men. It is ominous that at the presidential election in the United States in 1896, the three electorates in which women had votes supported the anarchical candidate. Such sparks from the anvil of experience are instructive to those who are capable of learning.

In New Zealand the franchise was extended to women in 1893. In South Australia "an Act to amend the Constitution" (Dec. 1894) conferred votes upon women in that colony, with the concurrence of an absolute majority of members of the two Houses.[25] It has been shown in previous pages that the slight security afforded by the requirement of absolute majorities in effecting constitutional changes in Victoria and South Australia was due to Wentworth's labours in New South Wales; and though the treachery of Lord John Russell destroyed Wentworth's handiwork for New South Wales, the feebler safeguards provided for Victoria and South Australia were allowed to remain in force.[26]

The doctrine of the modern "Friends of the People" differs little from that of iconoclasts in France a hundred years ago. It strives to gratify, not the reason but the passion of a people; it would appeal not from Philip drunk to Philip sober, but from Philip sober to Philip drunk. It declares in effect that taxes paid by the industrious shall be expended at the discretion, or indiscretion, of crowds who have not contributed, and that abstruse problems of government shall be decided at the behest of numbers told by the head; and some are so slavish to this doctrine as to affirm that even injurious measures ought to be enacted on the demand of a majority, howsoever composed. The far-reaching consequences of such a theory can only be glanced at in this place. Demoralization precedes decay. The springs of industry cannot flow freely if men be robbed of the fruits of their labour; and plundered diligence will wither, or will resort to mean devices to defend itself at the expense of its own and of the national honour. Meanwhile the intoxication of success in local spheres spurs on those elected in separate colonies by the mass-vote to clamour

[25] In December 1896, the ministry in Victoria passed through the Assembly a bill conferring the franchise upon women, but did not take the precaution of securing an absolute majority on the second and third readings as required by the Constitution Act. The Standing Orders required that certificates of the passing by absolute majorities on such readings should be affixed to the original bill, and the President of the Council (Sir W. A. Zeal) ruled that as the bill before him had not the required certificate, it was not properly before the Council, and could not be considered.

[26] *Supra*, pp. 12, 25*n*, 32, 33, 34, 36, 37, 38, 39, 40, 41, 43*n*, 49*n*, 61, 62.

for its adoption in a larger sphere when the colonies shall have been confederated; and only the natural antipathy (on the part of the less populous Australian colonies) to being trampled upon by mere numbers, has nerved them to contend that at least in the second Chamber, or Senate, there shall be, either in the manner of its construction, or in the duties allotted to it, some safeguard for its constituents, and some guarantee that reason and not passion shall prevail.

It is not only by withholding hereditary honours (except in one or two instances) in her colonies that England has deprived her sons of their full birthrights, and herself of aid from the loyal. One or two commissions in the army and navy are obtainable by colonial youth, but no one can assert that serious efforts have been made to give them an Imperial character, by embodying in them a representation of the breadth of the empire. And yet the people of the colonies are in themselves as loyal as any within the British dominions. On all occasions of trial, or of joy, spontaneous outbursts testify that not only Queen Victoria, the well-beloved, but her august house, which owns the blood of Cedric and of the Plantagenets, is dear to the hearts of England's sons abroad.

But it is not in nature for the full harvest of national life to ripen if wholesome seed be denied. As England has sown so will she reap; and when she looks not for it, the day may come when the development of principles which she has thought good enough for her children may mar her own social life. Yet he who travels in the colonies will find that within the bounds at their command they have done noble work. In proportion to their means their generosity is notable. There are homes among them second to none in the world for intelligence and virtue. Hospitality is from the heart, and universal. The gains of science, the great works of genius produced in other lands, are treasured with avidity; and enterprise pours them into the colonies with promptitude and profusion. There is a demand for works of a high order. In several colonies Universities already exist, and their advantages are availed of by denizens in the others. Colleges are springing up in which the inestimable benefit of association with others in

study, under guidance of resident principals of high character, is secured for young men. No longer need th hope of a flock journey to Europe, far from domesti sympathy, and from those gentle constraints of affectio which bid him to be true to his family and himself. I by-gone days there have been melancholy instances o blighted prospects when the eldest-born, committed wit anxious prayers to a career of study in Europe, remot from friends, has shattered their hopes with his own pe verted life. It has been sometimes cast in the teeth o colonists that they produce no great literary works. Th reason is plain, and was manifested also in America. Th books and reviews of the old world follow a colonist in th new, and he has not time to create or to support a specia literature. In a primitive community each man has wor to do. At first, all are bread-winners, and the stages ar slow by which a leisure class is created. When created, i will do its proper work. This generation in England ha seen a kinsman in America (Captain Mahan) take posse sion of the field of naval warfare, and reveal the hidde springs by which British ministers, aided by the genius o Nelson and the devotion of Jervis, guarded Britain fro disaster, and maintained her supremacy on the sea.

A curious instance of the prodigality of nature wa shown in the case of Wentworth. Born in Norfolk Islan in the eighteenth century, a stray scion of an ancien house, he was sent as a child to England for rudimentar education, and after revisiting New South Wales, an distinguishing himself as an explorer, he returned t pursue his studies at Cambridge. In competing for th Chancellor's medal in 1823, he was placed second to W Mackworth Praed by examiners whose verdict has hardl been confirmed by later critics.[27] In later life, Wentwort devoted his energies to the political service of his country and, except in flashes of his oratory, the genius whic might have placed him at the head of Australian write was known no more.

[27] Mr. T. A. Browne, the "Rolf Boldrewood" of Australian fictio declares that Praed's poem was "patently inferior in poetic force a nobility of treatment to that of the Australian."

Writers of occasional verse have appeared in Australia, as in other countries, and the names of natives—Charles Harpur, Henry Halloran, Henry Kendall, and some others, long ago kindled hopes among their friends which were not to be realized. The widely popular poems of Adam Lindsay Gordon and J. B. Stephens, though written on Australian topics, cannot be ascribed to Australian creators, inasmuch as both those authors were equipped for their lives before they breathed Australian air. The same may be said of Henry Kingsley, Marcus Clarke, and other prose writers. In the world of prose fiction, two authors may fairly claim inspiration from Southern influences—Mrs. Humphrey Ward, a grand-daughter of the great Dr. Arnold, and Mr. T. A. Browne. The first was born and educated in Tasmania, and the second arrived in Sydney when four years of age. His fiction, "Robbery under Arms," and other works, are popular beyond the bounds of Australia. His work, "The Miner's Right," though a fiction, as "Ivanhoe" is a fiction, has a special value as an almost historic picture of the social lives of adventurers on the goldfields. Perhaps no part of the world can hope to produce another *Judicio Pylium, ingenio Socratem, arte Maronem*, but in that regard the happiest of other climes has no reason to hope for pre-eminence over Australia.

The lack of full possession of British institutions, retards the day when the whole intellectual energies of the colonists shall be combined on behalf of their native land, and it is not unnatural that some of them should shrink from their condition, and betake themselves to London, Paris, or other cities, where they and their children become haunters of hotels. They cease to have a country. The world is to them a show. Duty disappears. They crave but the two delights which the great satirist scornfully described as the aim of a Roman mob. As no land gains by their presence, so none suffers by their death. Nature will, doubtless, compensate a colony for unnatural desertion by her children, or by those whom she has enriched. Family ties will bind those whom duty could not constrain. The runaways will bear less and less proportion to those who remain. If the full pulse of English life be denied, channels will be found through which colonial life will be

sustained, and home-keeping cousins of the colonists can with ill-grace condemn results springing from acts done or assisted by successive Secretaries of State.

That wisdom will always prevail, can be expected nowhere. France, deeming herself in the van of civilization and intelligence, has been convulsed by contradictory schemes of government propounded by her leaders at brief intervals for a hundred years. Theoretical socialists, and enemies of the characteristics of England's past greatness, have wormed their way to the very citadel of her strength; and, when their burrowing encountered unusually tough obstruction from any ancient safeguard of the Constitution, they found in the eloquence of a minister, who had been many things by turns and everything with intensity, an advocate powerful to persuade his countrymen to abandon what he and they once held in reverence. The signs of the times show that there is already a plot to subject the fortunes of England (by means of universal suffrage and equal electoral districts) to the votes of the dwellers in a small number of towns.[28] The strongest position may be lost by an army whose commander is false, and no Constitution can resist the treachery of those who are sworn to maintain it. Its recovery from prostration can date only from the shame which follows adversity.

The colonies of Australasia have hitherto been exempt from evils which fall upon nations surrounded by ambitious neighbours ready to take advantage of weakness or unworthiness. They are comparatively safe from foreign dangers, although those dangers are perhaps underrated by many public men, and may perhaps supply the fulcrum by which federation, so long talked of, may be brought about. A spark may kindle aspirations which without that spark might sleep for generations.

Downing Street has been called upon from time to time to assist in dividing the colonies, but not often in aiding them to combine. Various efforts made in the colonies,

[28] After the text was published (1883), further degradation of electoral qualification took place under Mr. Gladstone. Nevertheless, greatly to the credit of the British character, and of the champions of union, a House of Commons was returned in 1895 which furnished a patriotic majority of 152. Until when? The unspeakable disloyalty of Gladstone's proposals in 1893 greatly aided the loyal in 1895.

with various motives, have been recorded in the foregoing annals. Side by side with efforts of the loyal, who have had in view the integrity of the empire, there have been aspirations for colonial federation with the hope of disintegration of the empire. Eminently the Royal Colonial Institute in London has striven to press the question wholesomely upon public attention. But abstract theories, or those which seemed abstract, have not aroused the class which postpones measures until a time of danger compels consideration which ought to have been accorded in a time of rest. Day by day the growth of communities abroad brings nearer the time when English-speaking subjects of the Queen who do not dwell in England will outnumber those who do. The old procrastinating formula, that to-morrow will be as yesterday, is continually falsified, but continually embraced.

The hopes of those who would broaden the Imperial bond of union are ascribed to sentiment, and that word has acquired a sickly and unreal meaning in many minds. Nevertheless, it is often based upon strong feeling which no wise statesman would deride. It created the Italy of to-day; it conducted our brethren in the United States through a portentous struggle for the integrity of their Union; and it has reared a German Colossus out of the fragments of past centuries. It remains to be seen whether the mother country and her offspring in Australia can solve the problem which has not been found too arduous for continental nations.

The idea of strengthening the attachment of the colonies to the mother-country was languidly approved in theory, but acquired no momentum from popular demands in England or in Australia. Thousands thought the object good, but unattainable. Millions thought that if it were desirable it would come in due time without labour on their part. A few, like John Bright, thought it a dream. To the disloyal it was odious, because it might strengthen the empire. Colonial federation was in the same category with Imperial. Orators sometimes uttered aspirations for it in rounding their periods; but only Wentworth in early days had pronounced that Australian federation was an immediate necessity. In July 1853 he formulated some of its objects,

and induced the New South Wales Legislature to declare that the formation of an Australian General Assembly was "indispensable, and ought no longer to be delayed." The Colonial Office was supine; and in London (1857) Wentworth, as chairman of "The General Association of the Australian Colonies," pressed the subject upon Mr. Labouchere (Secretary for the Colonies). When that functionary pleaded that it was difficult to deal with the question, Wentworth promptly drafted for him the necessary enabling bill; but, notwithstanding its "purely permissive character," and confessing that the existing difficulties would probably increase, Mr. Labouchere would do nothing to serve his country.

There were in 1857 no wranglings about tariffs in the south, such as in later years made Australian federation a thorny question; and the stifling of Wentworth's efforts could not fail to increase the impediments to a larger measure of Imperial scope. Gallant individual efforts were made in England by F. P. Labilliere (a native of Victoria), Sir F. Young, Mr. Dennistoun Wood, Mr. C. W. Eddy, and others; and the formation of the Royal Colonial Institute in 1868, with the aid of Lord Bury (afterwards Earl of Albemarle), provided an arena for discussion of all questions concerning the relations between the colonies and the mother-country.

In 1869, when it was broadly asserted by Mr. Froude[29] and others, that Mr. Gladstone and some of his colleagues in the ministry were bent upon severing the colonies from the mother country, some efforts were made by the opponents of severance.

At a Social Science Congress at Bristol, Mr. (afterwards Sir) John Gorst, Mr. F. P. Labilliere, and others read papers in support of union.

Two months afterwards (Nov. 1869) Mr. Edward Wilson (formerly editor of the Melbourne *Argus*) was prominent in convening what were called "the Cannon-street meetings," at which Sir James Youl (formerly of Tasmania) presided.

Mr. Westgarth (formerly of Victoria) moved the first resolution. Mr. Labilliere moved the second. No form of federation was proposed, but the mutual advantages of

[29] *Vide supra*, p. 273.

close connection between Great Britain and the colonies were descanted upon.

In 1871 a conference on "colonial questions" was held at the Westminster Palace Hotel in London. Amongst guarantors of the expenses were Sir C. Nicholson and Sir D. Cooper, both of whom had been Speakers of the Legislative Council in Sydney. Mr. Labilliere was the honorary secretary.

The Duke of Manchester presided, and Mr. Ed. Jenkins (chairman of the executive committee) delivered an opening address, fervent in aspiration for the union of all parts of the empire. Mr. F. Young, Sir C. Nicholson, and others took part in the proceedings.

Papers on various subjects were read and discussed subsequently.

Mr. Labilliere read a paper on "Imperial and Colonial Federation," which was discussed by the Earl of Airlie, Mr. R. Torrens (of South Australia), Mr. Ed. Wilson, Mr. E. Jenkins, Mr. Dennistoun Wood, Mr. F. Young, and others. The discussions[30] were published.

In 1875 an address on "Our Colonial Empire," delivered in Edinburgh by Mr. W. E. Forster, a statesman of mark, struck a note which commanded attention. "All that was required was to imbue the colonies and ourselves with the desire that the union should last, with the determination that the empire should not be broken up—to replace the idea of eventual independence, which means disunion, by that of association on equal terms, which means union. If this be done, we need not fear but that at the fitting time this last idea will realize itself."

Abstract truths, howsoever important, seldom produce immediate action; and to leaven large masses with activity is difficult, unless pressing danger compels attention.

Again, in 1884, Mr. Labilliere and a few friends addressed themselves to the task, and (29th July 1884) a meeting (or conference) was held in London, at which Mr. W. E. Forster presided.

The meeting was addressed by the Right Hon. W. H. Smith, the Earl of Rosebery, Sir Charles Tupper (of

[30] Discussions on Colonial Questions. Strachan & Co., Ludgate Hill. London. 1872.

Canada), the Earl of Wemyss, Lord Bury, Sir Henry Holland, Mr. Edward Stanhope, the Marquis of Normanby, and others.

The resolutions carried were:—"(1) That in order to secure the permanent unity of the empire, some form of federation is essential; (2) That for the purpose of influencing public opinion, both in the United Kingdom and the colonies, by showing the incalculable advantages which will accrue to the whole empire from the adoption of such a system of organization, a society be formed of men of all parties to advocate and support the principle of federation." There were ancillary resolutions,[31] one of which declared that it was essential to "adequately provide for the organized defence of common rights."

The conference was adjourned, and re-assembled on the 18th November 1884, when General and Executive Committees were appointed to manage affairs. Sir Henry Barkly, Captain J. C. R. Colomb, Sir Don. Currie, the Earl of Dunraven, Viscount Folkestone, Mr. Arnold-Forster, Sir John Gorst, Sir Wm. Gregory, Mr. Staveley Hill, Sir Henry Holland, Mr. Labilliere, Sir F. Young, Viscount Lewisham, Sir W. McKinnon, Sir C. Nugent, Sir Lewis Pelly, Sir Lyon Playfair, the Earl of Rosebery, Professor Seeley, Sir Francis Smith (formerly Chief Justice in Tasmania), Right Hon. E. Stanhope, Colonel Howard Vincent, the Earl of Wemyss, Sir Fredk. Weld, Sir T. Brassey, Lord Reay, Sir Rawson Rawson, and about 200 others were on the General Committee, and most of those whose names are thus enumerated were also on the Executive Committee.

[31] It fell to the author's lot to second a vote of thanks to Mr. Forster, and to assure him that "the identification of his name with the movement would inspire confidence among Englishmen in all parts of the world." He replied that he could not "too warmly thank the mover (Sir C. Tupper) and seconder for the kind words they have expressed. They are far too kind. But they are spoken with some authority, and I shall remember them as one of the bright spots in a political life which has not been bright altogether." It may be mentioned that the author served on the General and on the Executive Committees of the League from 1884 till he returned to Australia in the end of 1892. In parting from Mr. Forster after the meeting of 29th July, 1884, the author assured him that his words as to the respect in which Mr. Forster was held in Australia were not formal but sincere, and Mr. Forster feelingly replied—"I can't tell you how I felt them."

The constitutional resolutions passed were:—"That the object of the League be to secure by federation the permanent unity of the Empire. That no scheme of federation should interfere with the existing rights of local Parliaments as regards local affairs. That any scheme of Imperial federation should combine on an equitable basis the resources of the empire for the maintenance of common interests, and adequately provide for an organized defence of common rights."

The press in England highly commended the formation of the League and its objects. Branches were formed in the United Kingdom, in Canada, and elsewhere. In February and March 1885 Mr. Forster published articles in the *Nineteenth Century*.

He kept his mind fixed upon the need of "organization for common defence and a joint foreign policy," and merely suggested the means by which opinions throughout the empire should be gathered and promulgated. He called attention to offers, from colonies, of aid in the Soudan, which had "struck the British public with pleased surprise." "What is now wanted is the embodiment of our willingness to give the colonies participation in that policy which may involve them in war, and which must often closely affect their interests."

In April 1885, Mr. (now Sir) J. Gorst read a paper before the Society of Arts, Mr. Forster being in the chair. Dismissing direct representation in Parliament as useless, and the creation of a new paramount Imperial Legislature as impracticable, the lecturer deemed it feasible "to recognize the right of the colonies, through their representatives, to exercise direct control over the administration of Imperial affairs." There was discussion, and Mr. Forster declared that there was no "need to be over-anxious to have a detailed plan brought forward. We might throw the movement back greatly (he wrote afterwards) by any premature plan."

Carefully abstaining from formulating a scheme, but promoting the growth and concentration of public opinion throughout the Empire, Mr. Forster had reason to be satisfied with the work done. In the beginning of 1886 a monthly journal was established by the aid of liberal friends.

Professor Seeley furnished an article pointing out the value of such an organ.

The first annual meeting of the League was held at the Mansion House (15th Feb. 1886) the Lord Mayor presiding. Among notices in the press was one in the *Morning Post* which said that "to have advanced prematurely any cut and dried plan of federation, no matter how perfect, would have simply been to court failure." Some other newspapers did not thus appreciate the prudence of the League. All regretted the absence of Mr. Forster from the meeting; and ill-health was followed by his death on the 5th April 1886.

His loss was great to England, and ominous of danger to the Federation League. On the 3rd June Lord Rosebery was made chairman, but not without opposition. The sagacious Sir H. Barkly in June 1886 uttered, in the League journal, a warning against rashness:—"The great thing seems to me to be to avoid the mistake of prematurely pressing forward any 'cut-and-dry' scheme." The staunch F. P. Labilliere constantly maintained that "to *propose* a plan is for those delegated to do so by the responsible governments of this country and of the colonies, and for them only." Professor Seeley, at a conference of the League (held at the Colonial and Indian Exhibition, 1st July 1886), said: "Might we not, by a too hasty scheme, involve ourselves in inextricable difficulties? I am in favour of federation, not of premature federation." Sir A. Galt, of Canada, having suggested that the Imperial Federation League should make some practical suggestions, a member[32] replied that he thought the League extremely wise in putting forward no scheme, and in dictating to no person. "It was for the friends of unity to call upon the government to ascertain from the colonies what their opinions are in an organized and effective manner." "I agree with Sir Alexander Galt—Imperial Federation must begin at home—but I ask only that the invitation for a conference should be the beginning. My proposal is only to press upon Her Majesty's government the duty of convening a conference composed in

[32] he author of this work.

some such proportions as are observed in the Bundesrath of the German Empire." Convinced that the calling of a conference of colonial representatives was the only safe policy which an irresponsible body like the League should support, the member who thus spoke, after consulting Professor Seeley, moved (14th July) in the Executive Committee of the League: "That it is desirable, not in haste, but with steady persistency, to urge Her Majesty's government to convene a conference in London for the purpose of considering the best means for securing the closer federation or union of all parts of the Empire, such conference to be composed of representatives of all the colonies, and of members appointed in the United Kingdom of Great Britain and Ireland." After discussion the debate was adjourned, and on the 17th July (Lord Folkestone being in the chair), the Executive Committee (at a meeting with delegates from branches of the League from some colonies), on the motion of M'Goun, from Canada (seconded by the author of this work—with the addition of the concluding fifteen words), it was resolved that a deputation should urge the government to "call a conference, or to appoint a Royal Commission . . for the purpose of suggesting some practical means whereby concerted action may be taken—(1) For placing upon a satisfactory basis the defence of the ports and the commerce of the empire in time of war. (2) For promoting direct intercourse—commercial, postal, and telegraphic—between the several countries of the empire in time of peace; and any other means for securing the closer federation of all parts of the empire."

The deputation was favourably received (11th Aug.) by Lord Salisbury, and in the Royal Speech proroguing Parliament it was intimated that the principal colonial governments would be communicated with. Consequently, on 4th April 1887, a conference was assembled in London. Sir H. Holland (now Lord Knutsford), Colonial Secretary, presided. The Prime Minister and nine other members of the government attended, and Canada, Newfoundland, all the Australian colonies, New Zealand, the Cape of Good Hope, and Natal sent representatives, among whom were many holding high office in the places they represented.

Many subjects were discussed, and a practical result was

attained on the subject of the naval defence of Australia. Under the terms agreed upon at the conference, supplemented by legislation in the colonies, an Australian auxiliary squadron was established. The colonial contribution amounted in 1892 to £126,000, annually, the quota of each colony being determined on the basis of its population. The squadron contained in that year five screw cruisers and two torpedo gunboats, and at the same time eight Imperial war-vessels were on the station.

There was congratulation on the result of the conference of 1887, and the *Times* (21st June) declared that "Imperial federation is universally recognized as a thing desirable in itself, and not impossible of realization at some future day, while a practical beginning has been made by the establishment of arrangements for mutual defence of a kind totally new in colonial history."

Such was the result of a determination on the part of the Imperial Federation League—to abstain from promulgating a policy; to concentrate in its journal the phases of public opinion throughout the world; and to promote the gathering together of representatives from the colonies, as a necessary preliminary to action.

In March, Lord Rosebery said that the conference of 1887 should be the "first of a series" of colonial conferences. In October 1888 (still chairman of the League), at a meeting in Edinburgh, he said—"In my judgment, it is not for the Imperial Federation League to propose schemes. . . ." The cause was one (he said, in 1888) "for which, if needs be, anyone might be content to die." At the fourth annual meeting of the League (May 1889) he declared that he was "not in favour of the export of plans from Great Britain to the colonies. I believe, and have always held, that if a plan is to come at all it must come in the shape of a colonial, not a British demand."

Soon afterwards he asked the government to "consider the advisability of inviting the self-governing colonies to send delegates to London to confer and report upon the possibility of establishing closer and more substantial union between the mother country and such colonies."

Lord Salisbury's reply (July 1889) went far beyond a refusal to comply; and (in consequence of the manner in

which some members of the League received it) became fruitful of disaster.

Lord Rosebery vainly remonstrated against Lord Salisbury's opinion that it was "unusual and inexpedient for the government to summon a meeting to consider the question of federation unless they were themselves prepared to make a recommendation on the subject."

As it had been reported in the press that Lord Salisbury had said (Nov. 1888) that "federation of the empire" "means ten letters which constitute the word federation, and it means nothing else," his reply to Lord Rosebery (read by the light of his former announcement) exercised baneful influence on many members who joined the League after Mr. Forster's death. (In June 1891, Lord Salisbury's *obiter dictum* was qualified by his admission (to a deputation from the League) that the subject of federation was "nothing more nor less than the future of the British empire.")

In August 1889 a special meeting of the League resolved to ask Lord Salisbury to receive a deputation on the subject of inviting the colonial governments to send delegates to London "to confer and report upon the possibility of establishing closer and more substantial union between the mother country and the colonies. . . ."

Again Lord Rosebery insisted that the view of the League had uniformly "been that any scheme should come from the colonies."

Meantime, Mr. G. R. Parkin, of Canada, on the part of the League, was visiting Australia, and addressing audiences with marked success.

In November 1889 a branch of the League having been formed in the city, Lord Rosebery (in accordance with a resolution[33] of the Council of the League) emphatically declared, at the Mansion House, that the League were "prepared to limit and define their exertions, for the present, at any rate, to the promoting and maintaining and stimulating of Imperial conferences."

[33] "That the establishment of periodical conferences of representatives of the self-governing communities of the empire should be the first aim of the Imperial Federation League." 14th November 1889.

The *Times*, in commenting on the meeting, said that the Imperial Federation League declined, "wisely enough, to formulate a definite scheme or plan."

There were, of course, some scattered voices hostile to close union of the empire and its offshoots. The Chief Justice of Queensland (Lilley), in a vapouring letter (1889), sneered at the idea of federation, which he preferred to call "fetteration." He "looked steadily to the inevitable and noble outcome of an Australian republic." If Englishmen wished to retard it, "the sooner they tried the better." His words elicited little but condemnation.

In 1890 the proposed deputation to Lord Salisbury was still contemplated, and there were symptoms of a desire to make stipulations beforehand as to the duties to be entrusted to it. The League had received large accessions to its numbers after Mr. Forster's death, and there were signs that his wise spirit no longer prevailed in its councils. Eager minds desired to formulate if not to dictate the work which the conference ought to do, and the better to enforce their views introduced new members as partisans. They strove to warp to special purposes the machinery created for the general good. The conference which they contemplated was to obey orders, and all the advantages attending the deliberations of a convention sitting with closed doors, as the Americans sat when they framed their constitution, were to be dispensed with. Neither by the American Convention, nor by any Federal Conference, could recommendations become operative without subsequent ratification by those who created its members; but the United States delegates had the priceless advantage of discussing with open minds the problems submitted to them free from the intervention or dictation of injudicious friends, and from rash criticism upon their labours before the results could be submitted in a complete shape to their constituents and masters.

Who could be so rash as to declare that he knows beforehand, and can pronounce upon the value of all arguments adducible in a conference summoned from all parts of the world? And if not, what sense is there in fettering a conference with detailed instructions? It is sufficient protec-

ion for the powers which constitute a convention that hey can reject its recommendations.

If its members be wise they will give due weight to the rguments of their brethren, and may solve the problems efore them. If otherwise, nothing good can be looked for t their hands.

Concessions mutually made in conference have more irtue in them, and better prospect of life, than arbitrary ronouncements made beforehand by those who, being par-isans first, have by the prompture of their own desires endered themselves unfit to be judges.

The resolution of the League that the establishment of conferences should be its "first aim" met with general approval, but the Birmingham Chamber of Commerce coupled its assent with an opinion that the "primary essential condition of Imperial Federation is a Customs Union of the Empire." The League in Canada resolved also that "the most important question is that of Inter-Imperial Trade." In Canada, the House of Commons had unanimously carried an address to the Queen (1890) affirming their "unswerving devotion," and their "fixed resolve" to aid in maintaining the political connection between Canada and the rest of the British Empire.

At the annual meeting of the League in London (May 1890), Lord Rosebery adhered to his opinion that the proper policy of the League was to promote conferences.

Unhappily a domestic bereavement in 1890 withdrew Lord Rosebery from active co-operation with the work of the League, and the formation of an United Empire Trade League, under the auspices of a member of the Imperial Federation League, at this time tended to confusion.

In May 1891 the Council of the League resolved to request Lord Salisbury to receive, "at the earliest timely date," a deputation advocating the convening of a conference of "the self-governing countries of the empire," and (17th June) Lord Salisbury received the deputation, which was introduced by Lord Brassey.

In reply, the Prime Minister declared that the subject of Imperial Federation was of "profound importance"—'nothing more nor less than the future of the British Empire;" and he deprecated as too modest the policy of

the League in not formulating "a cut-and-dried scheme." Unfortunately the modesty reprehended was soon aban doned.

In the following month the General Council resolve (but not without opposition) that a Committee should b appointed to prepare "definite proposals which may forn the basis for an Imperial Conference."

The Committee appointed consisted of Lord Brassey an ten others, including Sir C. Tupper and Sir John Colomb both of whom were prepossessed with special ideas. Sir C Tupper promptly broached his schemes in October in th *Nineteenth Century*. One of them was that representative of federated Australia and the Cape colonies, with one fro Canada, "should be leading members of their own Cabinet and become members of the Cabinet in England," and shoul go "out of office when their government is changed."

Apparently they were to remain in the Cabinet after change of the British ministry, and thus to learn th arcana of each political party. He would impose an im port duty of 5s. a quarter on all foreign corn, and thi enable England to give an important advantage to he colonies without affecting "the cost of bread." If a warn ing had been needed of the disruptive consequences undertaking, through unrepresentative and irresponsib persons, to frame "definite proposals" to bind the empir Sir C. Tupper and a few others promptly furnished i Meanwhile, with noble perseverance, Mr. Parkin forwarde the true interests of the League at large towns in Englan and Scotland.

An imprudent step had been taken by the League whe it sanctioned (16th April 1891) the formation of "Th Imperial Federation League in the United Kingdom." There might have been some fitness in the act if advocate on the ground that the League contemplated suicide, an was in search of an heir. As if anticipating the decease the original League, some of its members took office in th new one.

On the 16th November the Committee on "definite pr posals" submitted their report (dated in July) to a meetin of the League, over which Mr. Edward Stanhope preside They had sought information from about thirty person

(One member of the Executive Committee in response condemned the publication of crude "definite proposals.") They did not propose to abrogate the fundamental rules fixed under Mr. Forster. They advocated the formation of a "Council of the Empire," not immediately, but "when the Provinces of Australasia and South Africa are each united under one government as Canada now is," and a representative of each government might be available in London. Such a Council would deal with Imperial defence. The amount of contribution for defence would, "probably by general consent, be left at the outset to the choice of the individual self-governing States." When "the outset" was to cease, and by what authority new arrangements were to be made and sanctioned, they left to future chances.

Inexorable conditions then drove them to the conclusion that only the old rules of the League could give life to their "proposals." "The governments concerned should be invited to send representatives to a Conference summoned *ad hoc*." "Possibly" a preliminary Royal Commission might be needed. After "fulfilment of the essential conditions" other measures "would become more immediately practicable."

Colonial government securities, guarantees for loans, admission to public service of the empire, the admission of colonial jurists to the Judicial Committee of the Privy Council, uniformity in certain branches of law, postal and telegraphic arrangements, were touched upon as to be thus dealt with. Inter-Imperial trade might after a time be dealt with, but the conference must come first.

All the elaborate painting of the report came to the complexion, at last, that the maxims of Mr. Forster, Professor Seeley, and others, were wise; and, meantime, the conditional suggestions might cool the ardour of many friends. It was signed, however, without protest by all the Committee—Lord Brassey, Professor Bryce, Sir John Colomb, Sir D. Cooper, Mr. Arnold-Forster, Lord Lamington, Sir Lyon Playfair, Mr. J. Ranken, Sir Rawson Rawson, Lord Reay, and Sir C. Tupper.

Urgent appeals were made to members to adopt the report unanimously, and respect for the chairman, Mr. Edward Stanhope, induced acquiescence which might not

otherwise have been accorded. But the damage which would accrue to the cause of Federation by the adoption o the report was pointed out, and one speaker earnestly entreated the Council not to give credence to the silly mis statements, often circulated, that any hostility to the mother country prompted colonists to pass protective tariffs. He was more cordially listened to on that subjec than when he predicted the downfall of the League as the result of the adoption of the report.

Whether the dissolution of the League was attributable to the abandonment of its early policy may of course be disputed, but it followed speedily. Members of the Specia Committee (whose advice was adopted after such earnes entreaty) soon showed how artificial had been the unan imity procured for the report. In May 1893 Lord Rea moved at a League meeting that statements made by Si C. Tupper as to the intentions of other members of the Council were injurious misrepresentations (as to designs t levy contributions from colonies), and Sir C. Tupper having accepted the "assurances of leading members o the League . . . as proving that he was wrong in the statements he had made," the matter was allowed to drop.

The seventh annual report, adopted on the 10th May urged upon members the duty of personal efforts to add t the membership of the League, and lauded the progress o branch Leagues in Canada, Australia, and England Month after month (until September) the journal of the League appeared with the usual notices of the proceedings of affiliated branches in Canada and in Australia.

But the self-inflicted wound had rankled in the body of the League, and in December 1893, the president (Mr. Stanhope) was compelled to summon the member to deal the last blow to the organization, which once, unde Mr. Forster's care, seemed destined to useful life. By a majority of one the members present resolved that the League should be dissolved at the end of the year, and the precipitance of the self-destruction was shown by absolute disregard of affiliated branches in Canada, Australia, and elsewhere. Colonists had for years been urged to form branches affiliated to the League; they had complied; and

without warning the tie which connected them was severed in a day.

The parent of 1884 deserted her offspring in 1893. The colonial branches thus abandoned were left to struggle on as they might choose by adopting a fresh organization or by imitating an ignoble example.[34]

A heavy blow and great discouragement had been inflicted upon a noble cause, and its foes were of its own household. As a nucleus, gathering opinions from all parts of the empire and circulating them both in England and in the colonies in its journal, the League had done yeoman's service, and as a body of some reputation—if it had adhered to the principles laid down by Mr. Forster—might have achieved much. It was the bond which held together the bundle of sticks. To rend that bond was to shatter the labours of years. Difficulties inherent in the task in hand might have taxed the wisdom of the League, but wanton suicide was no fit remedy for any evil. "*Nec perinde dijudicari potest quid optimum factu fuerit, quam pessimum fuisse quod factum est.*" Mr. F. P. Labilliere, the steadfast friend of federation, deplored[35] the result. "This might and surely ought to have been avoided."

Some of W. E. Forster's friends and coadjutors endeavoured in 1894 to revive the work of the abandoned Imperial Federation League, through the city of London branch of that body, and the name of Sir John Lubbock gave weight to the attempt. The Imperial Federation League of Canada offered to co-operate on the basis of commercial union, and a "small extra duty on foreign imports, with few exceptions, to provide for Imperial defence."

In 1895 it was formally resolved to constitute a new association on stated principles; but it was not until 29th January 1896, at a meeting of the Mansion House, presided over by the Lord Mayor, that the new association was created under the name of "The British Empire League."

[34] The secretary of the League in London wrote to Mr. D'Esterre Taylor (hon. secretary of the branch in Victoria) :—"If the League comes to an end it will only be that the cause may progress the better."—Melbourne *Argus*, Nov. 1893). Those who destroyed the League may have imagined that they could improve upon its policy.

[35] Federal Britain. Sampson, Low, Marston and Co. London. 1894.

The Duke of Devonshire became president; Sir J. Lubbock, treasurer; and Sir Robert Herbert, chairman of the executive.

Sir J. Lubbock said that, "to the regret of the City branch, the Imperial Federation League had been dissolved by a majority of one, in consequence of some difference of opinion on the Council."

Mr. Faithfull Begg, M.P., declared that "the principle of continuity from the Imperial Federation League was preserved in the British Empire League, . . . and, moreover, they did not intend to depart one iota from the policy of old organization."

His words were eloquent of the means by which that organization had been destroyed. Mr. Richard Dobell, of Quebec, moved a resolution expressing the great satisfaction of the meeting at the acceptance of office by the Duke of Devonshire.

The founding of the British Empire League in London elicited a speedy response from Canada. The Imperial Federation League in that dominion had been affiliated to the Imperial Federation League in England, and was therefore, like other branches in Australia and elsewhere, severed from the parent stock without consultation or warning. On the 4th March 1896, at Ottawa, representatives from the Canadian provinces resolved (on the motion of the Prime Minister) to adopt the title, "British Empire League," and to affiliate the Canadian League to the League in London.

On the 3rd December 1896 the British Empire League held its first annual meeting at the Guildhall. The Lord Mayor, who presided, suggested that it would be "a fitting commemoration of Her Majesty's sixty years' reign if a scheme could be framed for the absolute unification of our world-wide empire." The Duke of Devonshire, president of the League, moved the first resolution, and lucidly explained the objects of the British Empire League, which were in reality those of the defunct Imperial Federation League.

Mr. Dobell, of Canada, declared that "the first actual scheme of Mr. Forster contained almost everything for which they were to-day striving." Resuscitated healthy

sympathies were so prevalent that Sir Charles Tupper (whose opinions were made a ground of contest on the eve of the abandonment of Mr. Forster's league) was content with saying that, though he was an "advocate of preferential duties, he was aware that this was a private opinion, and that he was not entitled to raise the question."

In adverting to the unhappy episode in which the "late Imperial Federation League undertook to prepare the outlines of a scheme of confederation which it was hoped might form the subject of discussion at another conference," the Duke leniently said: "As it turned out, that enterprise was of too ambitious a character. No action followed upon the preparation of that scheme, and partly I think in consequence of differences of opinion[36] which arose within the League in regard to it, partly from other causes into which it is not necessary that I should now enter, the preparation of that scheme was shortly followed by the dissolution, by its own act, of the Imperial Federation League.[37] Some of its members, however, declined to

[36] This guarded reference to the disruption of the Imperial Federation League elicited a letter (*Times*, 14th Dec. 1896) from Sir J. Colomb (of the Imperial Defence Committee), stating that the disruption was "due to the fact that some like myself held, and held strongly, that union between all parts of the Empire for purposes of defence was the urgent and practical programme the League would advocate; others felt equally strongly that commercial union would be the primary object of the League, and union for defence a secondary. Neither party would give way." Sir J. Colomb's confession calls for no alteration in the text of this work, in which it is contended that loyalty to the spirit of Forster's League ought to have prevented its unworthy destruction. Sir J. Colomb's letter states that the Imperial Federation League "never undertook to prepare, and never did prepare, the outlines of a scheme of confederation." Such a statement is no doubt made in good faith, but cannot command assent from those who know (as the text explains) that in 1891 Sir J. Colomb consented to act on a special committee to frame "definite proposals" as a "basis for an Imperial conference," and did act upon it as narrated in the text. To one who opposed the appointment of the committee as a fatal error, Sir J. Colomb's letter cannot but seem eccentric. One aim of Forster's League was to "provide for the organized defence of common rights." The conference of 1887 did good service in that respect. Other conferences might have done more. But, in the meantime, to rend the League asunder in petulance or despair was to "give up to party what was meant for mankind," and to imperil the good of all.

[37] It is a melancholy satisfaction to the author to reflect that, as to the appointment of the committee and the adoption of its report, he strove to resist to the utmost the steps which ruined the League and called for the late dirge upon it which the Duke of Devonshire has pronounced while

accept the rebuff thus sustained . . . the British Empire League has been constituted with the object of continuing the operations of the late League."

The *Times*, in commenting on the Duke's speech, declared that "the unity of the Empire has been powerfully promoted by the efforts made to realize the impossible, and the Imperial Federation League is outlived by its works." The *Times* did not point out that the destruction of the League was wrought by the abandonment (by a section of its members) of the principles on which it was founded under Mr. Forster.

Meanwhile the names of responsible controllers of the British Empire League, including the Duke of Devonshire, Sir John Lubbock, and Mr. Arthur Balfour, are such as to justify a hope that if wisdom and patriotism can reanimate the idea with which Mr. Forster obtained partial success the failings of his successors may be redeemed.

Early in 1894 some of those who had brought about the destruction of the Imperial Federation League formed a new association styled the Imperial Federation Defence Committee, for which they solicited contributions. The committee contained three members who had, while members of the Imperial Federation League, recommended its dissolution; and the secretary of that body became honorary secretary of the new committee, which forthwith issued its notices and pamphlets from the office which had been used by the deposed League.

The sum of the pamphlets was that colonial contributions for defence were contemptible in amount, and that more ought to be asked for.[38] Mr. Labilliere, writing to the

this volume is passing through the press. On the 17th August 1891, being "invited to assist the committee" by sending to them his views, the author *inter alia* wrote—"I beg to remind you, and I hope to do so without discourtesy, that I opposed the resolution in my place in the Council; and contended that it is impolitic, and may prove disastrous to formulate definite proposals or schemes anywhere else than in a conference of duly appointed representatives from all parts of the Empire."

[38] Regardless of the fundamental difference between military posts (in Crown possessions or Crown colonies) and settlements in which self-government and local financial control are established, the Defence Committee asserted that Singapore was ill-treated because it contributed largely for military purposes under Imperial management. But all who go to Singapore, Hongkong, or any other important military post, are aware of the conditions under which they can lawfully reside there.

Times, thought that "nothing could be more indiscreet than having a society in London with the special object of finding fault with the colonies and exposing their backwardness in matters of defence." The untimeliness of the "finding fault" was acutely felt by those who knew that the Australian colonies were then reeling under the shock of the financial crisis of 1893.

Sir F. Young urged, in the *Times*, that before the colonies could be asked to "contribute to Imperial defence they should be guaranteed a fair and equitable participation in the control and foreign policy of the Empire itself."

On the contention that, in the administration of the navy a share should be given to the colonies, the *Times* pointed out that the navy was administered by the Admiralty, but controlled by the Cabinet; that there was no room in the organization of the Admiralty for larger or wider responsibility; and that a share in the control would involve admission into the Cabinet, which would thus become a Federal Council, involving the transformation of the Imperial Parliament into a Federal Assembly "as the only escape from intolerable constitutional confusion." Colonial liability to contribute to cost of defence could only be realized (on the terms of the Defence Committee) either by an antecedent federation of the Empire, or by fatally weakening the authority, initiative, and independence of the supreme organ of Imperial policy.

Either the time was ripe for the Federal constitution or it was not. If it were ripe, the only logical, safe, and prudent form was to organize the Empire on a federal basis involving the establishment of a system of common defence. If it were not ripe, the establishment of a system of common defence, such as the Defence Committee recommended, could not lead to the federation of the Empire; and failing to lead to it, would tend to confusion, disruption, and overthrow, by fatally impairing the efficiency and potency of the force which, under existing control and administration, maintained the stability and continuity of Imperial policy, and thereby sustained the loyalty and patriotism of every worthy subject of the British Crown.

Leaving these efforts to avert the consequences of having "turned a great enterprise awry," it is necessary to glance

at the various proposals which have been made in recent years to bring about the Federation of the Australasian colonies.

Previous pages have described[39] the manner in which a Committee of the Privy Council advised in 1849 that a "General Assembly of Australia" be empowered to deal with enumerated subjects; and the manner in which the resultant Federal clauses were struck out of the Australian Colonies Government Bill of 1850 in the Imperial Parliament. Wentworth's proposals in the New South Wales Legislature in 1852, and his subsequent efforts on the same subject in England in 1857, have been narrated (in the 16th chapter) in this volume.

The subject, though sometimes thought of, was not formally considered until many years had elapsed. In 1881 New South Wales suggested at an Intercolonial Conference in Sydney[40] that the time had arrived—not for an Australian Federal Parliament but—for the creation of some Federal authority empowered to deal with certain questions.

A bill was framed, but the conference did not adopt it. At another conference in 1883 the subject was again discussed. The stars, in their courses, had surrounded the subject with difficulties which did not exist when, in 1853-1855, the efforts of Wentworth to bring about a federation, which "ought no longer to be delayed," were frustrated. Ill-omened hostile tariffs, sprung from ignorance and fostered by the arts of cleavers to office, had reared artificial barriers against union. Yet the evils of antagonism were acknowledged.

[39] Vol. II., pp. 384, 385, *et seq.*

[40] Parkes, for New South Wales, moved the resolutions authorizing the framing of the measure. When a similar measure was framed in 1883 he held aloof from it. At a subsequent conference in Melbourne in 1890 he explained (in reply to Mr. Playford, of South Australia) the change in his opinions—"Upon reflection . . . I became satisfied that the body proposed to be created under my bill would not succeed (and) decided to advocate it no longer. I was not to be swayed in the matter by any such reason as that contained in the fact that the paternity of the body in question was ascribable to me." At the 1890 conference, Sir H. Parkes also stated that "I have been really surprised myself in going back to the earlier records to find that it was the child of the greatest men we ever had in any of the colonies. In my own colony I find it had the favour of Mr. Wentworth, who certainly ranked second to none." (Official Record, Australasian Federation Conference, 1890, pp. 78 and 1.)

A convention of Australasian representatives was held in Sydney in 1883. Burning questions—the annexation of New Guinea, the suzerainty of the New Hebrides, the influx of French relapsed criminals, and other troubles—convinced some public men that only by union could the voice of the South hope to command respect. Notably, the assistance rendered at that conference by Mr. James Service, of Victoria, was eminent. New Zealand sent representatives to Sydney, but their function was limited to observation. They were forbidden to act; and the limitation of their powers implied distrust of the proceedings of the conference, which framed a Draft Bill to constitute a Federal Council of Australasia, and passed resolutions, one of which declared that the "further acquisition (by foreign powers) of dominion in the Pacific, south of the equator, would be highly detrimental to the safety and well-being of the British possessions in Australasia, and injurious to the interests of the Empire." Annexation of "so much of New Guinea" as was unclaimed by the Dutch; the "obtaining of control" over the New Hebrides; and a recommendation that the colonial governments should submit to their legislatures measures for defraying the cost, with due "regard to the relative importance of Imperial and Australasian interests," were amongst the decisions signed by three representatives of New South Wales, three of Victoria, two of Queensland, two of South Australia, two of Tasmania, and one of Western Australia. The Governor of the Fiji Islands was present at the conference.

In 1885 the Imperial Parliament passed an Act[41] enabling a Federal Council to deal with "such matters of common Australasian interest, in respect to which united action is desirable, as can be dealt with without unduly interfering with the management of the internal affairs of the several colonies by their respective Legislatures."

Several colonies passed the Acts required to enable them to exercise the new powers, but Sir H. Parkes (who had not joined in the conference of 1883 in Sydney) held aloof from its work, and New South Wales sent no representatives to the Federal Council.

[41] Federal Council of Australasia 1885 (48 and 49 Vict., cap. 60).

Few Acts were passed by the Federal Council, which held its sessions at Hobart at intervals of about two years. Pearlshell fisheries, bêche-de-mer fisheries, and provision for discipline and government of the garrisons at King George's Sound and Thursday Island, were the principal subjects dealt with from 1886 to 1893.

In 1889, in response to appeals from Mr. Gillies (in Victoria), who pointed out the dangers incurred by neglecting the subject of national defence, Parkes (in Sydney) was still opposed to any resort to the Federal Council, but consented to a special conference or Parliamentary Convention.

A conference was held in Melbourne (Feb. 1890), Mr. Gillies, the Prime Minister, being in the chair. "Union under the Crown," and the holding of a Parliamentary Convention, were decided upon unanimously, though one representative from New Zealand stated that the Federal idea had not taken root in New Zealand, and another deplored the distance of New Zealand from Australia; while a member from Sydney thought any union worthless which would tolerate the Border Duties between Victoria and New South Wales. The resolutions passed were embodied in a loyal address to the Queen.

In May 1890 Parkes moved in the Sydney Parliament the resolutions adopted at the conference in Melbourne. Mr. Dibbs, the leader of the Opposition, objected to the declaration that Australian interests would be promoted by an "early union under the Crown." He wished Australia not to be a "dependency upon any power on earth, but to be a nation with its own flag. . . . We desire to have Australia for the Australians in every shape and form, in view of the inevitable, that at no distant date we shall become a nation as free as England itself."[42]

In the Victorian Parliament resolutions moved by Mr. Gillies were unanimously carried on the 10th June 1890.

There were animated debates in all the colonies of the continent; and in Tasmania seven delegates were appointed

[42] On the 10th March 1891, at a Convention in Sydney, Mr. Dibbs repeated that the "spirit of the rising generation of Australia is instinct with freedom, which will impel our people at the earliest possible moment to form a nation of their own."

to attend the National Australasian Federation Convention which was to meet in Sydney in March 1891.

New Zealand was content with three delegates, of whom Sir G. Grey, hostile to the contemplated Federation, was one.

On the 2nd March 1891, the delegates attended the Convention in Sydney. Leading public men in all the colonies were members. They were assembled in the Legislative Assembly Chamber. Sir Henry Parkes (President of the Convention), Mr. Barton, and Sir J. P. Abbott (the Speaker), were notable among the representatives of New South Wales. Mr. Gillies appeared among those of Victoria. Sir Samuel W. Griffiths (Prime Minister of Queensland) was Vice-President of the Convention, and rendered important service in shaping its deliberations in the form of a Bill. South Australia sent her Prime Minister, Mr. Playford, and others, all of whom had held portfolios in Adelaide. Tasmania sent her Prime Minister (Mr. Fysh); her Treasurer (Mr. Bird); her Attorney-General (Mr. Clark); the President of her Legislative Council, and other leading men. Western Australia sent Mr. John Forrest and his brother, Sir J. Lee Steere, and others; and New Zealand sent delegates disabled from committing her to any principle. Victoria sent Mr. Gillies and others, amongst whom was her Prime Minister (Mr. Munro). His contributions to debate were repetitions of the cries with which he had supported Mr. Berry during a deadlock which those cries created in Victoria; *eadem stans protulit, atque eadem cantabat versibus isdem.* It was in vain that he and his colleagues were reminded by Mr. Barton that where power of amendment had been denied to an Upper Chamber, the friction was greater between the chambers than where the power existed; and he saw no instruction in the fact that the Upper House in Victoria was the only one in Australia in which the constitution barred the Council from altering a money bill, and that Victoria was the only Australian colony in which deadlocks had occurred; provoked in each case by the Assembly which, because the Council could not alter a money bill, presumed to include in money bills features which were improper for them.

On the 4th March Sir H. Parkes moved resolutions which, as finally adopted, provided for preserving intact

the powers of every colony except such as might be deemed "necessary" to the National Federal Government; that trade between the federated colonies should be "absolutely free;" that the imposition of Customs duties be "lodged in the Federal Government and Parliament, subject to such disposal of the revenues thence derived as shall be agreed upon;" that military and naval defence "be entrusted to the Federal forces under one command."

"Subject to these and other necessary provisions," there was to be—

Firstly, "a Parliament composed of a Senate and a House of Representatives, the former consisting of an equal number of members from each colony, elected by a system which shall provide 'for the periodical retirement of one-third of the members,' thus 'securing to the body itself a perpetual existence combined with definite responsibility to the electors;' the latter to be 'elected by districts formed on a population basis,' and possessed of the 'sole power of originating and amending all bills appropriating revenue or imposing taxation.'"

Secondly, "a Judiciary consisting of a Federal Supreme Court, which shall constitute a High Court of Appeal for Australia, under the direct authority of the Sovereign, and whose decisions as such shall be final."

Thirdly, "an Executive consisting of a Governor-General and such persons as may be from time to time appointed as his advisers," such persons sitting in Parliament, and their term of office depending upon their possessing the confidence of the House of Representatives as expressed by the support of a majority.

A constitutional committee was appointed to prepare a Draft Bill for the Constitution of the Commonwealth of Australia,[43] and the Convention adjourned.

On the 1st April the bill was submitted to the Convention; and, as approved by that body, provided that the Governor-General[44] should be appointed by the Queen. The Senate was to consist of eight members for each State

[43] Other committees were appointed to deal with finance, trade, &c., and with the establishment of the judiciary.

[44] Sir G. Grey's amendment that he be appointed by the people was rejected by an overwhelming majority.

chosen by the Parliaments of each State for six years, half of them "retiring every three years." The representatives were to be elected "by the electors of the more numerous House of the Parliament of the State," every three years, on the basis of one member for every 30,000 inhabitants, the minimum number of members for each State being four. Members of both Houses were to be paid £500 a year. Ministers when appointed were not called upon to seek re-election. Among thirty-two enumerated subjects with which the Legislature might deal (taxation was to be uniform) were "the relations of the Commonwealth to the islands of the Pacific," and "external affairs and treaties," on both of which subjects it could hardly be doubted that difficulties would be encountered with regard to foreign governments.[45]

The Senate was to have power to "affirm or reject, but not amend appropriation or taxation bills." Laws imposing taxation were "to deal with one subject of taxation only," with the exception of "laws imposing duties of Customs on imports." In cases of bills which "the Senate may not amend" it might return the same to the Lower House, "with a message requesting the omission or amendment of any items," and the Lower House might omit or amend accordingly, if it should think fit to do so. A proposal that the Senate should have equal power with the other House was lost by sixteen votes against twenty-two. Two colonies, South Australia and Western Australia, furnished majorities in favour of giving power to the Senate. The Supreme Court of Australia was to be the final Court of Appeal for Australia, "but the Queen might grant leave to appeal to herself in Council."

Rejecting the maxims of the great American[46] (Alexander Hamilton) the Convention resolved that the States should retain all "powers not exclusively vested in the Parliament of the Commonwealth." The States were to elect their own Governors.

[45] The provision thus made in 1891 was repeated in the Constitution Bill prepared by the Convention at Adelaide in 1897.

[46] Hamilton desired to safeguard the union of the States by enacting that all powers not expressly confided to the individual States were inherent in the United States. Jefferson and others contended that all powers not expressly apportioned to the United States remained in the individual States. Some persons have contended that if Hamilton's

On the 9th April, amidst confident congratulations, the Convention was dissolved, and the speedy passage of the Bill in the Australian Legislatures was deemed certain by many persons in the colonies and in England.

But when the New South Wales Parliament assembled in May, Sir H. Parkes was confronted by an equal division in the House, and a dissolution took place. The new House met in July. Parkes (in his Memoirs) averred that "the Labour members, some thirty in number in a House of 141 members, decided to support us at the opening of the session." . . "It was unreasonable to expect the Labour members to agree to our setting aside all provincial matters, however important, for the great national question of Federation." Parkes therefore set aside the great national question. His tactics did not succeed. In October 1891, a Bill being before the House, his Memoirs aver that "the Labour members approved of the Bill without exception, but they could not resist the temptation to humiliate the government they were supporting . . . many of them with a sneering laugh in their faces."[47]

He was still of opinion that blame for the failure of the Bill of the Convention did "not lie with the people, but in the multiplicity of petty interests which block the way in Parliament." Yet none had laboured harder than he to degrade the Parliament to the condition of being a reflex of the petty interests of which he complained. He had tampered, so to speak, with the jury lists; and, when on his trial, became the victim of his own devices. There may have been a poetical fitness in such a downfall, but it was eloquent of future trouble.

The Victorian Legislature passed the Bill of the Convention, with amendments, but the lapse of the Bill in the mother-colony was felt to be fatal, and the hopes entertained when the Convention concluded its labours in 1891 vanished into air.

The Attorney-General in New South Wales, Mr. E. Barton, was identified with the next effort in that colony. The Australasian Federation League was founded in Sydney, on the 22nd June 1893. In the Town Hall, in

principles had prevailed in the eighteenth century, the secession war which afflicted the Union in the nineteenth might not have occurred.

[47] *Vide supra*, p. 375.

Sydney, 3rd July 1893, it was resolved that the cause should be promoted by an "organization of citizens, owning no class distinctions or party influences, and using its best energies to assist Parliamentary action." Parkes declined to assist, but the Mayor of Sydney became President, and the Vice-President was the Speaker of the Legislative Assembly. In December 1892, Mr. Barton addressed public meetings at Albury, and at Corowa (border townships in New South Wales, on the Murray River). Federation Leagues were formed there in 1893, which devised a scheme for holding a general conference at Corowa in the end of July. Public men in New South Wales and Victoria were invited to it. The Imperial Federation League in Victoria sent two delegates, the honorary secretary, Mr. D'Esterre Taylor, being one.[48] The Australian Native Associations in Sydney, Melbourne, and Bendigo sent delegates; and many others were sent by various associations.

The conference was opened on the 31st July, and at a public meeting in the evening, the head of the Victorian Ministry, Mr. J. B. Patterson, was warmly cheered when he advocated Federation as essential to the welfare and safety of the Australian communities.

On the 1st August the conference unanimously resolved, on the motion of Dr. Quick, from Bendigo—"That, in the opinion of this conference, the Legislature of each Australasian colony should pass an Act providing for the election of representatives to attend a statutory convention or congress to consider and adopt a bill to establish a Federal Constitution for Australia, and upon the adoption of such bill or measure it be submitted by some process of referendum to the verdict of each colony."

Many favourable comments on the work of the conference appeared in the press.[49]

[48] The annual Report (1896) of the Imperial Federation League in Victoria said:—"The Enabling Bill adopted by several of the Australian Parliaments embodies, to a considerable extent the recommendations of the Corowa Conference of August, 1893, which were supported at a great meeting organized by this League and held in the Melbourne Town Hall on the 11th September following. The valuable assistance rendered by the delegates of this league in initiating these recommendations has been duly acknowledged in the *Corowa Express* of 13th February last."

[49] Sir Henry Parkes, active though not in office, addressed a public meeting at Corowa on the 16th August, and discussed the prospects of

The central office of the League was wisely fixed i Sydney. Dr. Quick followed up his success at Corowa b submitting to the Bendigo branch of the League (in Nov 1893) a draft bill to provide for the representation of Vic toria at the Australasian congress to frame a Federal Cor stitution, and the Bendigo branch adopted the draft.

Meanwhile the Imperial Federation League in Victori convened a public meeting at the Town Hall (Sept. 189: to support an early union of the Australian colonies und the Crown, and to commend the work done at Corow: Mr. Justice Holroyd (chairman of the Imperial Federatio League in Victoria) presided; Mr. Justice Hodges spok and the Mayor of Melbourne moved the first resolutio before a large and enthusiastic meeting.

Dr. Quick meanwhile addressed many audiences in su port of his draft bill, and in January 1894 brought it befo the Central League in Sydney, where, on the motion of M E. Barton, he was publicly thanked for his "services in th cause."

The Australian Natives Association, formed in Melbourn in 1871,[50] had sent delegates to Corowa in 1893. In 189 mainly through its exertions, an Australasian Federatio League was founded in Melbourne.

Among the rules framed by the Constitution Committe it was recommended that, in the event of a conventio being formed to frame a Federal Constitution, "the Vi torian delegates thereto shall be elected on the principle o one man one vote."

The meetings creating the new League had not bee large or representative of the Melbourne public, and som members urged that insistence upon a condition on whic

federation. Those who remembered his intrigues with Lang, Cowpe Lowe, and others against Wentworth in 1853-5, could but smile at Parke declaration at Corowa that, "for colossal power, clear insight into th principles of government, and for comprehensive grasp of almost all que tions put before Wentworth, there have been few superior men, anywher in my time." A characteristic tribute from Robert Lowe to Wentwor is of a different order. A visitor, seeing in Lowe's house a bust of Wen worth, said—"What! do you keep Wentworth's bust so prominent before you?" "Yes; the old dog (replied Lowe)! but it is for no love him, but for his fine old Roman head."

[50] In 1896 there were 124 branches of this Association in Victoria, wi 11,678 members, and the accumulated funds were reported to be £81,5 18s.

here was contention in the colony would militate against he usefulness of the League. It then appeared that some members cared less for the League than for forcing their wn opinions as to the suffrage upon the League.

Though it was admitted that many persons (including l the agricultural societies in the colony) refused to join he League under such circumstances, the provision was sisted upon.[51]

Active in maintaining repulsive terms was a member of he so-called "Labour Party" in Parliament, who thus dis- ayed the "bisson conspectuities" of his class, and caring othing for the welfare of farmers assisted in warping he proposed constitution in such a manner that a Queens- nd member of Parliament attributed the loss of the Con- ention Bill in Queensland (1896), "largely" to southern sistence on the "one man one vote" provision.

In June 1894 a conference was held in the capital of anada, and delegates from all the self-governing colonies, cept Natal and Newfoundland, attended it. Lord Jersey as present on behalf of the Imperial Government. Reso- tions were carried, recommending a preferential "Customs rangement between Great Britain and her colonies," the moval of any provisions in existing treaties which pre- nted the "self-governing dependencies of the Empire from tering into agreements of commercial reciprocity with ch other or with Great Britain;" the construction of a bmarine telegraph from Canada to Australia; and a fast eam shipping line from Canada to Australia, &c.[52]

[1] A member of the General Council moved—"That as it has been nd that many persons are deterred from joining the League because the sting constitution contains terms on which there is contention in the ony, it is advisable that the constitution should be revised with a view eliminate from it any such terms." The motion was rejected, and the ver, in resigning his seat in the Council, wrote:—"I hope that there is honest work which I would shun, if, by taking part in it, I would ist in procuring Australasian federation. But it is so unreasonable to pect that an association, which can, or will, do nothing to promote animity at home, can with any hope of success approach other colonies th proposals for Federation, that I am constrained to forward to you resignation of my seat in the General Council." His resignation was rteously accepted, with the regret of Mr. Deakin, the chairman—"as shall much miss your counsel, and stores of valuable knowledge." The e at page 511 below shows the need of circumspection.

[2] With the thorny question of denouncing the existing treaties between

In January 1895 the Federal Council met in Hobart From that body New South Wales had always held aloof but her Prime Minister, Mr. Reid, went to Hobart to confer with other ministers. The result was that they drafted an Australasian Federation Enabling Bill, under which a Convention, consisting of ten representatives of each colony, elected under the franchise of the Lower Houses therein, was to draft a "Federal Constitution under the Crown." When three or more colonies might have chosen their representatives, the Convention might be summoned and after framing a constitution, in the form of a Bill for enactment by the Imperial Parliament, the Convention was to adjourn, and the various Legislatures were to consider the bill, which was again to be considered by the Convention. The Bill, when finally adopted by the Convention was to be submitted to the electors for acceptance or rejection; when, if three colonies should pronounce in favour of it, the Houses of Parliament might adopt an Address to the Queen praying that the constitution might be "passed into law by the Imperial Parliament." In the colonies the Bill was to be submitted, in the first instance to the Parliament of New South Wales, and although disagreement between the Houses on financial questions in that colony was followed by a dissolution early in 1895 Mr. Reid was able (after inter-cameral conferences on financial measures) to pass the Enabling Bill, of which the second reading was carried by 62 votes against 5 in the Lower House.

England and Belgium and the German Zollverein, the Secretary of State dealt in a weighty despatch (June 1895) to the Governor-General of Canada, and the Governors in Australia and at the Cape of Good Hope The necessity of circumspection and foresight in framing treaties was never more clearly demonstrated than in the case of these treaties, in each of which a short clause prohibited differential duties in the British colonies as regarded the powers concerned; both of which powers made it known that they could not recognize denunciation of the clauses "apart from the rest of the treaty." As other foreign nations had the rights of "most favoured nations," a *locus standi* accrued to them also, and thus the hands of the British Government were bound in 1895 by the improvidence of the makers of treaties in 1862 and 1865, at which dates Lord Palmerston and Lord John Russell were Prime Ministers, aided by Mr. Gladstone as Chancellor of the Exchequer, Lord John Russell being Foreign Secretary in 1862, and Lord Clarendon holding that office in 1865. *O cæcas hominum mentes!*

Thus, more than forty years after Wentworth drafted an Enabling Bill, and had vainly urged the Secretary of State to give it life, the colony in which he had laboured took its first legislative step to give effect to his proposals.

Mr. Reid had done great service; but, unhappily, the Sibylline leaves of 1895 were different from those of 1853-5. No hostile tariffs barred the way in 1853; and in 1895 indiscriminate debasement of the suffrage had lowered the character of the representation in the Lower Houses on the Australian continent.

A wise moderation of the Second Chambers had, however, raised them in the estimation of their fellow subjects, and afforded some grounds for hope, if not for confidence.

Sir Henry Parkes, distrusting the intentions of Mr. Reid, who had supplanted him as leader of free-traders in New South Wales, wrote vehemently to the London *Times* (5th July, 1895), to denounce what he called the artifices by which, under Mr. Reid's guidance, Federation was retarded.

South Australia in December 1895, Tasmania in January 1896, and Victoria in February of the same year, adopted the Bill. In Queensland the Parliament was tardy. Though the Bill passed the Assembly in July, it was not passed in the Council until September, with amendments which the Assembly rejected. The Council contended that it was incumbent upon them, equally with the Assembly, to maintain the constitution, and that they would be unfaithful to their trust if they consented to delegate their powers to the Assembly in the election of members of the Convention.

To observers at a distance there appeared to be half-heartedness[53] in the manner in which the Bill was dealt

[53] Time was to reveal motives not acknowledged openly when the Bill was strangled. The Federal Council met at Hobart on 27th January 1897. There a Queensland representative, Mr. Byrnes, in moving that the Council should be strengthened by "provision being made by the several colonies for placing it on an elective basis," stated that distrust of the southern colonies had prevented Queensland from "entering into the proposed federation." "Already a demand had been made in the Sydney press that the Senate (under the Convention Bill) must be elected on a population basis. This would place all the power in the hands of New South Wales and Victoria." Another Queensland representative declared that "Queensland would not be brought under the iron yoke of federation.

with; and when the Council laid it aside in November the member who administered its death-blow ambiguously congratulated the Minister in charge of the Bill on "the calm and quiet manner" in which he had discussed the subject. It is unnecessary to encumber this narration by

It wished to remain in *statu quo*, being alarmed at the attempt of the democrats in New South Wales and Victoria to deny to the smaller States equality of representation in the Senate." Sir Hugh Nelson, the Queensland Prime Minister, on the same occasion said that "if Queensland had been left alone, and no attempt had been made to interfere with her, she might have been represented at the Convention. The interference had an injurious effect on the passage of the Federal Enabling Bill by Queensland." Another Queensland representative pleaded that "the statements made in the southern colonies that, unless Queensland's delegates to the Convention were elected under 'one man one vote,' they would not be admitted, were largely responsible for Queensland's absence from the Convention." (See note at p. 509 above.) It may be that Queensland's absence from the Convention at Adelaide was in some measure responsible for a provision in the Constitution Bill (there adopted) giving power to a Federal Parliament to force down the throats of an unwilling colony any suffrage whatever, howsoever repulsive to the sufferer. The apprehensions of Queensland, and the misgivings of Tasmania and Western Australia, were signally justified in April 1897 by a representative of Victoria at the Adelaide Convention. Though not classed as a Labour member, Mr. Higgins supported the wildest theories broached by empirics in Australia or elsewhere. After returning from the Convention he contributed to the *Review of Reviews* (with his name) an article on the work of the Convention, and urged—"it surely is of importance to Victoria to have a voice in framing the franchise on which Western Australia is to elect her senators." His advocacy of a tyrannical referendum to be invoked by the most numerous House of the Federal Parliament, is eccentric to the verge of drollery. In Switzerland there was known to be a procedure by which (after the two Houses had passed a bill), on the demand of a stated number of petitioners, the bill could be submitted to a process called the referendum, and the adoption or rejection of the new measure was decided by the popular vote. This process could not be applied to any case in which the Houses disagreed. Nevertheless, Mr. Berry and some of his supporters claimed (under sanction of Swiss precedent) to refer to a mass-vote points of disagreement between the two Houses in Victoria. As Mr. C. H. Pearson was a colleague of Mr. Berry, the term referendum eventually gave way to the word plebiscitum. The monstrous propositions of the bill of 1878 have been described in this volume (pp. 303, 304, &c.). Mr. Higgins, in the April number of the *Review of Reviews*, 1897, contended that "the mere existence of the extreme power of the referendum would operate to promote conciliation and compromise." *Risum teneatis!* Mr. Higgins blandly, and no doubt honestly, promulgates such a contention in a colony which has on more than one occasion seen the annual Appropriation Bill flagrantly disfigured by the inclusion of items which could not constitutionally appear there. If such things were attempted without means of enforcement, from what enormity would similar men shrink if the requisite machinery were at hand?

mentioning the local distractions which were deemed to have guided the course of Queensland at a critical hour. The Prime Minister of New South Wales evinced his zeal by visiting Queensland and interceding with public men, but in vain; and with some misgivings, the colonies which had passed the bill addressed themselves to the task of acting without co-operation of the dwellers in the spacious territory of Queensland, so rich in production, having so extensive a coast-line, and fronting with that coast-line a possible source of danger in the French possessions and quasi-protectorates in the Pacific.

To revive the apparently flagging energies of friends of Federation, a "People's Federal Convention" was held in November 1896 at Bathurst, in New South Wales; Dr. T. A. Machattie being President. Delegates from six colonies attended. Their mode of appointment was necessarily of a voluntary character, and unrepresentative of the Executive, or the Legislature, or the electorates in any colony. The members revised the draft bills already in existence, and the President expressed a hope that the proceedings would be of "service to the Statutory Convention," about to be elected. Sir S. W. Griffith, who was eminent at the Convention in New South Wales in 1891, circulated in 1896 some "Notes on Australian Federation." They contained a golden sentence which some members of the Convention at Adelaide in 1897 were not patriotic enough to regard—"Whatever else is doubtful, this at least may be regarded as certain—that a Federal Constitution which is to be lasting must not attempt to embody as fundamental principles any particular notions that a majority of its framers may hold on the abstract question of the proper basis of the parliamentary franchise."

Public interest in various colonies was somewhat increased by the energy of a few ardent spirits; and ere long Western Australia consented to send representatives to the Convention. But she did not resort to the electorates availed of in the other colonies. In New South Wales, Victoria, South Australia, and Tasmania the representatives were chosen by the electors for the Lower Houses.[54] In

[54] See the qualification of voters in Table I. of Statistical Appendix.

those colonies the election took place on the 4th March, and the proportion of voters in no instance showed that the general public were conscious of the importance of the issue to themselves, and to those who would come after them.

Although earnest addresses were made by active friends of Federation, the votes recorded were (excepting in New South Wales) far less in number than those given by the same constituencies at general elections for the Lower Houses. The only colony which suffered female voting was South Australia, and there the votes polled were far less than a third of the voters on the rolls. Sir Joseph Abbott, Speaker in New South Wales, did not lack support because he declined to canvass for votes. The public knew his career, he said, and he would leave them to decide upon his claims. Mr. Barton, the earnest promoter of Federation, was at the head of the poll. Mr. Reid, the Prime Minister, and other members of the ministry were among the ten chosen out of nearly fifty candidates, amongst whom the head of the Roman Catholic sect, Cardinal Moran, was rejected.

In Victoria, Sir G. Turner, head of the ministry, was at the head of the poll, Dr. Quick, the apostle of federation in Victoria, being second. The other eight were all members of Parliament. Not far behind the tenth successful man, Sir Henry Wrixon (a member of the Sydney Convention in 1891) polled more than 43,000 votes, and after him appeared Sir F. T. Sargood and Mr. Fitzgerald, members like himself, of the Legislative Council, and Mr. Murray Smith, a member of the Assembly; Mr. Gillies, a prominent member of the Convention in 1891, being lower in the list.

It was plainly shown that the machinery of the "caucus" is successful in obtaining votes, on whatsoever subject, without any need to appeal to reason. Whether ordering a "strike," or dictating the choice of a member, the Trades' Hall in Melbourne and its supporters in the press had extensive machinery at command. Those who deplored occasional disastrous results were not consoled by the reflection that many of themselves had by complicity or apathy conduced to existing evils.

Organizations can dispense with reason. A Victorian "Labour member," who had brayed for protection as a

means for procuring high prices for home products, and (when protection had run riot and prices were low) had informed a questioner that protection did not tend to raise prices, lost no popularity thereby. The *Age* newspaper, in a frenzy of inconsistency, urged the electors to elect various popular members, and with them Sir Graham Berry, whom at one time it had denounced[55] as unfit for any position of trust.

Thus the plotter of the third deadlock in Victoria was commissioned in the name of Victoria to aid in constructing a federal government.

If reason were deemed a necessary element in the debates of the Convention, it could not but be felt that the example of Victoria must needs go far to prove that the election of a Senate by a mass vote of the population would be fraught with evil at its inception. It was not surprising to find that a Labour member sent from Victoria declared in the Adelaide Convention:—"I have said, and I feel very sure that, with reference to our State governments we could have been governed better by one House than we have been by two," nor was it to be wondered at that while he was thus raving, the Greeks, the only independent European people who confide their fortunes to one House (misnamed the Βουλή, elected by manhood suffrage), were furnishing an object-lesson of hysterical incompetence, and loading their country with obligations appalling to all true lovers of its ancient glories and votaries of its modern welfare. Will the time ever arrive when men will not see without understanding, and when the lessons of history will not be thrown away?

In South Australia, the Prime Minister, Mr. Kingston, and one or two of his colleagues were elected by voting under the "one adult one vote" system. There was one woman candidate, but she was unsuccessful. The President of the Legislative Council, Sir R. C. Baker, Sir John

[55] See note at page 281 of this volume. Previous pages have shown that the limited area of Victoria and the easily-accessible populous places, facilitate the operations of those who desire to foster delusions at critical times and issue mandates to members of unions or associations on the success of which, in the language of Pitt (*supra* p. 474), they style their own decrees the voice of the people and trample on freedom under pretence of the national will.

Downer, and four others who were supported by a National Defence League, overbalanced the candidates who worked with the government.

The Tasmanian electorates selected their Prime Minister (Sir E. Braddon), their Treasurer (Sir P. Fysh), and other leading men. Some candidates had broached wild schemes in the name of democracy, and it was remarked that they and their supporters had been absolutely routed. Yet the interest taken in the election had not sufficed to draw to the poll so many electors as exercised the suffrage at a general election to the local Parliament.

Western Australia (which determined at a late date to join the Convention) declined to resort to a mass vote. The local Parliament, consisting of fifty-four members (in both Houses), placed their Prime Minister, Sir John Forrest, at the head of the list, closely followed by Sir J. G. Lee Steere, the election being held on the 15th March. Forty-eight members voted, Sir John Forrest receiving 45 votes and Sir J. Lee Steere 43.

The intermediary plan of election adopted in Western Australia furnished an infinitely larger proportion of the electorate than was shown in the colonies where mass voting prevailed; and as both her Houses were elected, every member had the moral weight due to the constituency he represented.

Adelaide was, by mutual consent, chosen as the place of meeting. There the Prime Minister of South Australia was unanimously made President of the Convention on the 23rd March, and Mr. E. Barton of New South Wales was on the 24th empowered to lead the Convention and frame resolutions as to the powers and functions of the Federal authorities. Having been prominent at the Convention in Sydney in 1891, he brought experience to his task, and promptly submitted resolutions analogous to those discussed in that year.

It would be idle to discuss the bill produced by the Convention. A copy of it, attached to this volume, presents it in full; but one important matter demands consideration by all to whom the future of Australia is dear.

The Convention held in Sydney in 1891 followed the example set by the United States in the last century by

leaving to each State the control of the suffrage for election of members of the House of Representatives in Congress.

The constitution of the United States left then, and still leaves, to each several State full power to determine the franchise for the Congress. The Senators, two in number for each State, are chosen by the State Legislatures, but the Federal Government does not prescribe the manner in which the State Legislatures shall be chosen. For the House of Representatives, members are elected in each State by those who have the qualification requisite for the electors of the most numerous branch of the State Legislature.

The constitution abstained from all interference with the qualification of the electors; and the local qualifications varied in different States. In some, possession of freehold was needed; in some, payment of taxes; in some, a performance of public duty, such as service in the militia.

After the lapse of a century, State freedom as to suffrage remains the same, and in many States a year's residence is requisite to entitle a man to vote.[56] The constitution leaves to each State the freedom which was its right at the time of the union. The great men of America sought no indirect gain by crippling their brothers.

"Ημισυ γάρ τ'ἀρετῆς ἀποαίνυται εὐρύοπα Ζεὺς
'Ανέρος, ἔυτ' ἂν μιν κατὰ δούλιον ἦμαρ ἕλῃσιν."

If meaner men strive to rob their neighbours of freedom elsewhere, ought they to be allowed to do so with impunity?

The Sydney Convention in 1891 respected the American example. The Convention in Adelaide in 1897 has dishonoured it.

There is another point on which the framers of the American Declaration and Washington in his farewell address[57] spoke with no uncertain sound. They recognized with humility the Creator and Preserver of the

[56] In Rhode Island and Kentucky two years' residence is still required. Statesman's Year Book. 1896.

[57] Washington wrote—"Of all the dispositions and habits which lead to political prosperity religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labour to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and cherish them."

universe. Their example was not followed in Adelaide, although numerous petitions from various colonies implored that in the preamble of the Commonwealth Bill there might be some recognition of God as the Supreme Ruler. Mr. Glynn of South Australia moved that the prayer of the petition should be complied with, but was defeated by 17 votes to 11. Six of the eleven represented a colony from which scriptural instruction had long been banished from the State Schools, which were therefore, in St. Paul's language, without God in the world. The members made no declaration that they felt themselves ἄθεοι ἐν τῷ κόσμῳ: they adopted a French practice, if not a French word; they placed their Creator in *indisponibilité*. They laid him aside. So at least they may have thought. Not on them perhaps, but on some remote successors, may fall the full penalty due for a denial by man of his dependence upon his Maker.

On returning to their homes some members, on appeal from their constituents, condescended to concur with the appointment of a day of supplication for rain. Thus does the "undistinguished space" of the will of man teem with inconsistencies.

The Convention discussed methods for rendering the Senate[58] powerless. The Bill provided for its election "by the people of the State as one electorate," and empowered the Parliament to define the term "people." It may seem a mockery to create two Chambers based on the same suffrage; but the object is palpable. Its effect would realize what Pitt called the worst form of despotism, by which a Convention wrought its own will in the name of the people. Nothing is easier than to flout at experience and wisdom; but folly will be justified of her children, and nothing is more sure than the punishment she earns.

No steps were taken to establish Grand Juries.

It has been a tedious task to trace the various efforts made to bind together the sundered colonies, or to strengthen their attachment to the parent land.

[58] An Attorney-General proposed what was called a "referendum." A defeated House might "resolve that a measure be referred to the direct determination of the people." If "affirmed" the measure was to be "presented to the Governor-General as if it had been passed by both Houses, and (on assent) it shall become law."

Dull in pursuit, the details must needs be dull in perusal; yet, without a record of past projects and failures, no sound judgment can be formed of the difficulties of the undertaking, and of the probability of overcoming them. It would be difficult to make a road through a country without a map of its features. If they are forbidding, the fault is not that of the maker of the map; and a record of the failure of one expedition may contribute to the success of another.

That loyalty to the Throne is the prevailing feeling throughout the colonies is plain to all who know them. That there are disloyal dissentients should surprise no one who remembers that John Bright was bitterly attacked for denouncing the conduct of Mr. Parnell and his Parliamentary associates as flagrantly inconsistent with their oaths, taken at the table of the House. If there be truly a skeleton in every house, it would be rash to expect to find no traitors in a numerous assembly.

But setting aside conspirators, the conditions of whose life are disloyal, there is academic difference among men belonging to the same political party. John Bright slighted as a dream what Lord Rosebery declared that "a man might be content to die for." William Forster, the incarnation of common sense and patriotism, set union before him as the worthiest object to be aimed at, both within and without the colonies.

Many men of high position and ability and many of the rank and file admit the nobleness of the object sought for, but will not put their own hands to the plough. If the labour should be vain no sweat of their brow will be lost in the furrow; if a crop should be yielded they will be sharers in the success. Their apathy, in one colony at least, contributed in 1897 to send as their own representatives men of whose opinions they disapproved, and who were labouring, not for the general good, but to work out in a wider sphere the mischiefs which they had already wrought on a smaller scale in their own.

Glancing at the mainland, Tasmania can observe enormous debts burdening colonies which lightly adopted manhood suffrage and payment of Members of Parliament, and may see the results, if not the consequence, in squandered lands, abandonment of State rights in the precious metals,

and crushing public debts to cope with which griping taxation has ensued. They have seen even personal freedom infringed.

If with open eyes, and warned by manifest signs, Tasmania should accept, unaltered, the Bill of the Adelaide Convention, her present public men will bear the blame.

"It surely is of importance to Victoria to have a voice in framing the franchise on which Western Australia is to elect her senators." Such is the proclaimed warning which Queensland, Western Australia, and Tasmania have received from a member sent by the Labour Party in Victoria to frame a Constitution to bind the whole of Australasia. And yet the very vigour which contends for local autonomy is honourably bound to respect the claims of sister States for equal liberty. Otherwise the claims made in the name of local freedom degenerate into a demand for tyranny.

Great names adorn the early days of struggles which end in shame. Roland, Minister of the Interior in 1792, proscribed in 1793, commits suicide to shun the guillotine, to which his wife fell a victim. Condorcet, himself a member of the Convention in Paris, takes poison rather than allow the fangs of the Convention to rend him.

The agitation promoted in Queensland to aid the cause of labourers sees more than fifty labourers deliberately poisoned by secret orders from organizations framed ostensibly to do them good.

The same organizations now sedulously, though secretly, promote schemes to compel each colony in the Australian group to submit to a federation, under which not reason but passion shall predominate; and the Condorcets and Rolands of Australia, if any there be, are at work with them. Without doubt the long use of municipal institutions in England and her offshoots puts anarchical leaders at some disadvantage as compared with the leaders of the French Convention; but many mischiefs were done in France before the public comprehended the nature of the abyss into which they were being led; and without apprehending that a community trained in self-governmen would suffer as France suffered, it may be deemed certain that much misery must be endured in any country whic

submits its fortunes to the control of ignorance guided, or rather misguided, by dreamers or designers of mischief.

If it be possible to pay too high a price for Federation, the possibility is presented in the loss of freedom; and a majority of the colonies, if all confer together, ought to be able to secure the boon without incurring the loss.

It is lamentable that Federation, whether Imperial or Colonial, has been so long deferred. What nobler offering could be made to the august Sovereign who wields the sceptre of the British Empire, whose wisdom all acknowledge, whose love for her people has found expression on innumerable occasions during a reign unequalled in duration, and who is enthroned in the hearts of hundreds of millions of subjects of almost every race in every quarter of the globe?

The awful curse of Shakspeare's tyrant is transmuted into a blessing for the Queen; for every creature loves her.

Tried by affliction herself, she has known how to soothe the afflicted, and to win the reward of the promise to them who humble themselves before God.

From the isles and from the continents the multitudinous seas waft blessings to her at the close of three score years devoted to the welfare of her people; and if, through wise counsels of the European Powers, Her Majesty's subjects be permitted to gather together in time of peace in London in June 1897, a sight surpassing the pomp of Roman triumphs will be presented to the world.

Those triumphs were the price of conquest and of blood; and following the beasts intended for sacrifice were the patriot captives, destined also for slaughter after contributing to the public show.

No such blot will disfigure the pageant in London. India will send her men of mark only to join in the chorus of goodwill. The Ave Regina! Ave Imperatrix! which they will utter will be prompted by the general accord with which the subjects of the Queen will hail and revere her as Victoria the Good.

FINIS.

APPENDIX.

TABLE I.—PARLIAMENTS.

Colony.	No. of Members.	Manner of Appointment.	Qualification of Voters.	Number of Electors, 1895-6.	Payment of Members.
New South Wales—					
Council	65	By the Crown for Life	—	—	Not any.
Assembly ..	125	Election for 3 years	Manhood suffrage, and three years' residence in electoral district.	266,371	£300 per annum.
Victoria—					
Council	48	Election for 6 years	£10 per annum rateable freehold, or £25 leasehold, and graduates, matriculated students, ministers of religion, schoolmasters, lawyers, medical practitioners, and officers of army and navy.	145,665	Not any.
Assembly ...	95	,, ,, 3 ,,	Manhood suffrage or ratepayers' roll.	234,552	£240 per annum.
Queensland—					
Council	41	By the Crown for Life	—	—	Not any.
Assembly ...	72	Election for 3 years	Six months' residence; also in districts where a man holds freehold of £100 clear value, or house property of £10 annual value, or leasehold of £10 annual rent, or holds pastoral lease or license from Crown, he can vote in such district.	79,660	£150 per annum.
South Australia—					
Council	24	Election for 9 years	Freehold of the value of £50, or leasehold of £20 annual value, or dwelling of £25 annual value.	42,896	£200 per annum.
Assembly ...	54	,, ,, 3 ,,	Being on electoral roll for six months, both men and women.	137,781*	Ditto.
West. Australia—					
Council	21	Election for 6 years	Freehold of £100 clear value, household or leasehold £25 per annum, or lessee or licensee of Crown £10 annual value, or ratepayer of annual value of £25.	4,624	Members receive no payment in either House, but they can travel free by public railways.
Assembly ...	33	,, ,, 4 ,,	Six months' residence, or freehold of £50 for six months, or £10 occupiers or leaseholders or licensees from Crown, or ratepayers in districts.	15,029	
Tasmania—					
Council	18	Election for 6 years	Freehold worth £20 per year, leasehold £80 per year, barristers or solicitors, and holders of commissions or university degrees.	7,253	£50 per annum, railway passes, and privilege of franking.
Assembly ...	37	,, ,, 3 ,,	All on ratepayers' rolls, and all who have incomes of £60 per annum.	31,155	

TABLE II.—POPULATION, 1895.

Name of Colony.	Area in Square Miles.	On the 31st December.						Estimated Mean Population of the Year.		
		Estimated Population.			Number of—		Persons to the Square Mile.			
		Males.	Females.	Total.	Males to 100 Females.	Females to 100 Males.		Males.	Females.	Total.
N. S. Wales ...	309,175	685,160	592,710	1,277,870	115.60	86.51	4.13	679,055	585,605	1,264,660
Victoria ...	87,884	605,164	576,587	1,181,751	104.96	95 28	13.45	605,810	574,230	1,180,040
Queensland ...	668,224	259,160	201,390	460,550	128.69	77.71	.69	254,997	197,855	452,852
South Australia (Proper)	379,805	181,161	171,492	352,653	105.64	94.66	.93	179,229	169,310	348,539
Do. (Northern Territory)	523,620	4,370	382	4,752	1143.98	8.74	.01	4,344	369	4,713
West. Australia	975,920	69,727	31,508	101,235	221.30	45.19	.10	61,485	29,025	90,510
Total ...	2,944,628	1,804,742	1,574,069	3,378,811	114 65	87.22	1.15	1,784,920	1,556,394	3,341,31
Tasmania ...	26,375	85,303	75,530	160,833	112.94	88.54	6.10	84,285	74,860	159,145
Grand Total	2,971,003	1,890,045	1,649,599	3,539,644	114.58	87.28	1.19	1,869,205	1,631,254	3,500,459

NOTE.—Aborigines are not included except in the case of Victoria, New South Wales, and Tasmania.

TABLE III.—RECORDED IMMIGRATION AND EMIGRATION BY SEA, 1895.

Name of Colony.	Number of Immigrants.			Number of Emigrants.*			Excess of Immigrants over Emigrants.		
	Males.	Females.	Total.	Males.	Females.	Total.	Males.	Females.	Total.
New South Wales	49,878	26,173	76,051	43,827	22,507	66,334	6,051	3,666	9,717
Victoria	55,481	25,718	81,199	60,061	28,825	88,886	-4,580	-3,107	-7,687
Queensland	16,420	7,171	23,591	12,844	5,809	18,653	3,576	1,362	4,938
South Australia (Proper)	29,089	7,673	36,762	31,943	8,546	40,489	-2,854	-873	-3,727
,, ,, (Northern Territory)	366	65	431	302	47	349	64	18	82
Western Australia	24,173	5,350	29,523	9,509	1,620	11,129	14,664	3,730	18,394
Total	175,407	72,150	247,557	158,486	67,354	225,840	16,921	4,796	21,717
Tasmania	11,937	6,830	18,767	10,547	6,621	17,168	1,390	209	1,599
Grand Total	187,344	78,980	266,324	169,033	73,975	243,008	18,311	5 005	23,316

NOTE.—Where the minus sign appears it indicates that the Emigrants exceeded the Immigrants by the number against which it is placed.

* The following is the *Unrecorded* Emigration by sea during the year in the Colonies named:—Victoria, 7735; New South Wales, 3199; South Australia, including by rail, 950; Tasmania, 1201.

TABLE IV.—PUBLIC REVENUE, 1894-5.*

Derived from—	New South Wales.	Victoria.	Queensland.	South Australia (Proper).	S. Aust. (North'n Territ'y)	Western Australia.	Tasmania.
Taxation—	£	£	£	£	£	£	£
Customs Duties ...	1,994,927	1,809,140	1,144,661	472,268	34,455	513,508	304,366
Excise Duties ...	258,610	308,975	61,015	28,020	...	...	18,390
Land Tax	...	120,093	...	86,031	274	...	49,883
Income tax	...	140,796	57,097	58,034	415	...	48,814
Stamps	287,921	298,858	101,886	96,739	148	22,760	19,697
Other	121,409	34,451	52,832	21,564	399	12,975	23,229
Total Taxation ...	2,662,867	2,712,313	1,417,491	762,656	35,691	549,243	464,379
Crown Lands Revenue—							
Sales	1,132,701	357,736	199,120	39,634	176	28,833	28,234
Rents	795,301	82,539	373,200	79,635	9,781	103,130	23,038
Other	60,026	33,180	...	86,894	168	8,928	...
Total Crown Lands	1,988,028	473,455	572,410	206,163	10,125	140,891	51,272
Public Works—							
Railways & Tramways	3,170,621	2,583,442	977,289	967,653	15,346	295,733	152,718
Water Supply ...	273,905	172,914	...	91,352	...	13,454	...
Post and M.O. Office	473,287	409,674	146,879	118,190	649	38,429	40,939
Telegraphs & T'phones	175,058	100,047	70,198	93,909	...	42,327	14,939
Total Public Works	4,092,871	3,266,077	1,194,366	1,271,104	15,995	389,943	208,596
Other Sources—							
Fines, Fees, &c. ...	203,655	91,237	22,274	39,565	628	14,467	12,540
Interest	50,171	41,399	154,633	45,607	..	5,169	12,664
Pilotage, &c., Rates...	49,532	...	13,150	26,070	834	9,943	...
Miscellaneous ...	188,032	127,671	38,847	82,524	686	16,285	12,520
Total	491,390	260,307	228,904	193,766	2,148	45,864	37,724
Total Revenue ...	9,235,156	6,712,152	3,413,171	2,433,689	63,959	1,125,941	761,971
Sum'ry of Revenue from							
Taxation	2,662,867	2,712,313	1,417,491	762,656	35,691	549,243	464,379
Land	1,988,028	473,455	572,410	206,163	10,125	140,891	51,272
Reproductive Works	4,092,871	3,266,077	1,194,366	1,271,104	15,995	389,943	208,596
Other Sources ...	491,390	260,307	228,094	193,766	2,148	45,864	37,724
Proportion derived from	%	%	%	%	%	%	%
Taxation	28.83	40.41	41.52	31.34	55.80	48.78	60.94
Land	21.53	7.05	16.78	8.47	15.83	12.52	6.73
Reproductive Works	44.32	48.66	34.99	52.23	25.01	34.63	27.38
Other Sources ...	5.32	3.88	6.71	7 96	3.36	4.07	4.95
Per Head of Population	£ s. d.	£ s. d.	£ s. d.	£ s. d	£ s. d.	£ s. d.	£ s. d.
Taxation	2 2 1	2 6 0	3 3 8	2 3 10	7 12 6	6 13 10	2 18 4
Land	1 11 5	0 8 0	1 5 9	0 11 11	2 3 3	1 14 4	0 6 5
Reproductive Works	3 4 9	2 15 5	2 13 8	3 13 1	3 8 4	4 15 1	1 6 3
Other Sources ...	0 7 10	0 4 5	0 10 3	0 11 2	0 9 2	0 11 2	0 4 9
Total Revenue ...	7 6 1	5 13 10	7 13 4	7 0 0	13 13 3	13 14 5	4 15 9

* Year ended 30th June, 1895, except in the cases of New South Wales, Tasmania, and New Zealand, the figures for the two former being for the calendar year 1895, and those for the latter for the year ended 31st March, 1896.

TABLE V.—CUSTOMS REVENUE IN AUSTRALASIAN COLONIES, 1895.

Articles on which Duty is Levied.	New South Wales.	Victoria.	Queensland.	South Aust. (Proper).	South Aust. (Nor. Terr'y)	Western Australia.	Tasmania.
Alcoholic Liquors and Materials therefor—	£	£	£	£	£	£	£
Spirits	641,389	344,771	251,043	79,066	6,825	129,504	44,997
Wine	23,309	14,331	13,775	2,940	63	16,060	4,428
Beer	51,546	29,519	23,993	10,234	552	36,271	2,358
Hops...	...	8,465	11,221	5,747	8	2,146	953
Malt	...	54	32,247	8,275	...	5,649	5
Tobacco, Cigars, Cigarettes and Snuff ...	247,492	250,561	163,999	66,631	3,730	70,849	47,774
Sugar and Molasses	136,912	264,752	746	44,337	536	10,194	37,943
Tea	...	119,627	81,134	34,111	824	9,105	12,226
Woollen and Worsted Manufactures ...	*a*	93,027	25,560	14,948	82	1,836	710
Live Stock	...	61,816	...	15,824	..	20,583	3,200
Fruits, Vegetables, &c.	81,923	69,034	41,150	22,500	303	17,086	7,433
Apparel and Slops	79,122	58,484	34,243	31,602	283	12,489	*a*
Silk Manufactures	12,595	40,978	2,518	*a*	*a*	*a*	*a*
Grain and Pulse	47,741	18,162	51,764	869	63	40,614	2,263
Rice	16,067	17,644	28,635	2,107	6,006	1,119	4,261
Machinery, Tools, and Implements ...	15,403	17,817	25,847	6,136	30	13,055	5,502
Miscellaneous...	694,008	450,031	449,973	250,848	11,802	227,897	133,125
Total Customs Revenue	2,047,507 [1,974,828]*b*	1,859,073	1,137,848	596,175	31,107	614,457	307,178 [303,717]*b*
Duty Received—							
At Fixed Rates	1,643,688	1,391,147	939,095	424,985	29,376	466,116	208,267
At *ad valorem* Rates	403,819	467,926	298,753	171,190	1,731	148,341	98,911
Customs Revenue per Head of Population	1 12 4 [1 11 3]*b*	1 11 6	2 14 8	1 14 3	6 12 0	6 15 9	1 18 7 [1 18 2]*b*

a Included under the item "Miscellaneous." *b* Net amount; gross amount shown above.

Colony.	General Administration.	Defences, Naval and Military.	Administration and Survey.	Agriculture and Grazing.	Mining.	Public Instruction, Science, &c.	Charitable Institutions, Medical, &c.	Railways and Tramways.	Water Supply, Irrigation and Sewerage.	General Public Works.	Post and Telegraphs.	Interest and Expenses.	Redemption of Loans.	Customs and Excise.	Ports and Harbours.	Miscellaneous.	Total.
	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£
N. S. Wales	1,231,243	274,974	332,154	81,840	71,120	781,007	349,011	1,882,612	104,334	744,507	774,200	2,304,927	102,770	75,630	207,839	315,135	9,633,303
Victoria ...	1,021,255	194,020	67,848	102,941	85,696	604,109	255,417	1,428,701	27,140	276,836	652,752	1,880,196	...	68,335	29,260	65,933	6,760 439
Queensland	434,373	63,067	61,466	31,407	17,757	221,605	109,320	581,973	1,802	105,308	298,467	1,256,582	...	42,834	52,288	30,183	3,308,434
S.A.(Pr'per)	229,803	29,753	49,922	23,483	10,447	153,600	77,237	592,999	19,225	103,256	192,668	923,137	61,100	20,405	14,081	52,129	2,553,245
Do. (N. Ter.)	13,953	...	625	5,352	4,123	235	2,540	11,102	...	1,500	4,020	66,161	...	4,094	*	14,984	128,689
West. Aust.	177,347	16,128	30,599	4,222	17,156	24,365	39,851	183,941	15,813	143,103	86,800	139,815	14,908	15,484	9,153	17,755	936,400
Total ...	3,107,974	577,944	542,574	249,245	206,299	1,784,921	833,376	4,681,328	168,314	1,374,510	2,008,907	6,570,818	178,778	226,782	312,621	496,119	23 320,510
Tasmania ...	93,839	8,577	8,660	1,438	4,621	39,212	40,378	120,388	...	21,981	61,972	328,882	12,184	6,814	..	...	748,946
Grand Total	3.201,813	586,521	551.234	250.683	210.920	1,824,133	873,754	4,801,716	168,314	1,396,491	2,070,879	6,899,700	190,962	233.596	312,621	496,119	24,069,456

Colony.	Percentage of Total Expenditure incurred for—								Total Expenditure per Head.
	General Administration and Defences.	Crown Lands.	Public Instruction and Science.	Charitable Institutions, Medical, &c	Public Works and Services.			Interest and Expenses of Public Debt.	All Other.	
					Railways and Tramways.	Post and Telegraph.	Other.			
	%	%	%	%	%	%	%	%	%	£ s. d.
New South Wales	15.64	5.04	8.11	3 62	19.54	8.04	8.81	24.99	6.21	7 12 4
Victoria	17.98	3.79	8.94	3.78	21.13	9.65	4.50	27.81	2.42	5 14 8
Queensland	15.04	3.34	6.70	3.30	17.59	9.02	3.24	37.98	3.79	7 8 8
South Australia (Proper) ..	10.25	3.31	5.27	3.05	23.41	7.61	4 83	38.85	3.42	7 6 10
Do. do. (North'n Ter.)	10.84	7.85	.18	1.97	8 63	3.12	1.17	51.41	14.83	27 9 9
Western Australia	20.66	5.55	2.60	4.26	19.64	9.27	16.97	16.52	4.53	11 8 2
Total	15.81	4.28	7.65	3 57	20.07	8.62	6.62	28.94	4.44	7 0 4
Tasmania	13.67	1.97	5.24	5.39	16.07	8.27	2.93	45.55	.91	4 14 1
Grand Total	15.74	4.21	7.58	3.64	19.95	8.60	6.50	29.45	4.33	6 17 6

* For years to which the figures relate see footnote to Table IV.

TABLE VII.—EXPENDITURE FROM LOANS, 1895.

Colony	Expended during the year on—								Total.
	Railways and Tramways.	Water Supply.	Sewerage.	Harbours, Rivers, Lighthouses and Docks.	Roads and Bridges.	Defences.	Immigration.	Other Works and Services.	
	£	£	£	£	£	£	£	£	£
New South Wales	469,425	148,190	193,648	278,093	22,544	16,150	...	174,435	1,307,485
Victoria	187,745	45,172	...	...	...	...	...	...	232,917
Queensland	163,303	19,862	...	7,940	22	2,076	...	174,570	367,773
South Australia (Proper) ...	153,836	208,318	18,556	11,493	27,186	9	...	112,488	531,886
,, ,, (Nor. Ter.)	1,189	...	...	...	...	...	...	...	1,189
Western Australia... ...	362,590	49	...	138,580	11,718	...	2,576	90,989	606,502
Total	1,338,088	421,591	217,204	436,106	61,470	18,235	2,576	552,482	3,047,752
Tasmania	1,922	...	...	...	54,489	..	...	56,867	113,278
Grand Total	1,340,010	421,591	217,204	436,106	115,959	18,235	2,576	609,349	3,161,030

NOTE.—Expenditure towards the redemption of old loans is excluded.

TABLE VIII.—PUBLIC DEBT, 31ST DECEMBER, 1895.

Public Debt Contracted for—	New South Wales.	Victoria.	Queensland.	South Australia* (Proper).	Western Australia.	Tasmania.	Total.
	£	£	£	£	£	£	£
Railways and Tramways	40,670,558	36,924,285	18,458,536	12,873,682	2,176,198	3,896,585	114,999,844
Electric Telegraphs	844,054	...	847,957	879,098	253,751	117,649	2,942,509
Water Supply and Sewerage	7,007,427	7,197,707	1,139,153	3,821,138	3,000	...	19,168,425
Roads and Bridges	905,856	108,042	1,555,472	1,376,584	86,792	...	4,032,746
Harbours, Rivers, Lighthouses, Docks, &c.	3,492,327	626,018	2,012,754	1,174,768	417,378	2,223,212	9,946,457
School Buildings	398,093	1,105,556	...	491,382	...	144,363	2,139,394
Defence Works	1,228,700	100,000	217,367	250,645	...	128,389	1,925,101
Other Public Works	2,328,976	766,909	989,716	255,877	163,472	955,747	5,460,697
Immigration	199,528	...	2,787,985	...	10,771	235,713	3,233,997
Deficiencies in Revenue	...	...	375,869	...	...	146,871	522,740
Balance—							
Other Services	...	...	...	1,432,851	217,179	—65,759	1,584,271
Unapportioned	...	...	3,489,125	...	661,571	...	4,150,696
Total Public Debt	57,075,519	46,828,017	31,873,934	22,556,025	3,990,112	7,782,770	170,106,877
Public Debt per Head of Population £	44 13 3	39 12 6	69 4 2	63 2 2	39 8 3	48 7 9	48 11 11
Multiple of Revenue ... ... Years	6.18	6.98	9.34	9.03	3.54	10.21	7.16
Percentage of Public Debt contracted for Railways and Telegraphs	72.74	78.85	60.57	60.97	60.90	51.58	67.60

* Including Northern Teritory.

NOTE.—Loans paid off on 1st January, 1896, are excluded. Temporary Bills in aid of Revenue, also excluded in the above table, were as follows:—New South Wales, £1,602,884; Victoria, £750,000; South Australia, £849,225; and Tasmania, £398,154.

TABLE IX.—PUBLIC DEBT—INTERNAL AND EXTERNAL, 31ST DECEMBER, 1895.

Colony.	Loans Repayable in—								Total Debts Outstanding.
	London.				Australasia.				
	Debentures.	Inscribed Stock.	Treasury Bills.	Total.	Debentures.	Inscribed Stock.	Treasury Bills.	Total.	
	£	£	£	£	£	£	£	£	£
New South Wales	10,788,650	39,535,100	2,000,000	52,523,750	777,000	3,024,769	750,000	4,551,769	57,075,519
Victoria	11,287,400	32,808,200	...	44,095,600	815,077	1,917,840	...	2,732,917	46,828,517
Queensland ...	9,810,100	20,564,034	...	30,394,134	1,499,800	...	...	1,499,800	31,873,234
South Australia ...	10,767,600	10,238,300	...	21,005,900	538,600	511,525	500,000	1,550,125	22,556,025
Western Australia	394,031	3,581,646	14,435	3,990,112	...	...	...	...	3,990,112
Total	43,247,781	106,727,280	2,014,435	151,989,496	3,630,477	5,454,134	1,250,000	10,334,611	162,324,107
Tasmania	3,076,550	4,456,500	...	7,533,050	249,720	...	...	249,720	7,782,770
Grand Total ...	46,324,331	111,183,780	2,014,435	159,522,546	3,880,197	5,454,134	1,250,000	10,584,331	170,106,877

TABLE X.—INTEREST ON LOANS OUTSTANDING, 1895 (31ST DECEMBER).

Colony.	Nominal Amount of Loans Bearing Interest at—								Total
	6 %	5½ %	5 %	4½ %	4¼ %	4 %	3½ %	3 %	
	£	£	£	£	£	£	£	£	£
New South Wales	94,500	4,500	3,363,350	3,700	750,000	23,010,669	29,326,200	522,600	57,075,519
Victoria	...	...	31,900	5,000,000	...	29,796,617	12,000,000	...	46,828,517
Queensland	...	...	...	...	...	21,385,300	10,489,634	...	31,873,934
South Australia	939,400	...	290,000	500,000	...	17,464,400	3,362,225	...	22,556,025
Western Australia	33,000	...	83,100	102,819	...	3,021,193	750,000	...	3,990,112
Total	1,066,900	4,500	3,768,350	5,606,519	750,000	94,677,179	55,928,059	522,600	162,324,107
Tasmania	179,900	...	100	...	...	4,145,570	3,457,200	...	7,782,770
Grand Total	1,246,800	4,500	3,768,450	5,606,519	750,000	98,822,749	59,385,259	522,600	170,106,877

Colony.	Annual Interest Payable.				Total.
	In London.		In Australia.		
	Amount.	Average Rate %.	Amount.	Average Rate %.	
	£		£		£
New South Wales	1,979,181	3.77	189,466	4.16	2,168,647
Victoria	1,729,140	3.92	109,320	4.00	1,838,461
Queensland	1,166,480	3.84	56,029	3.74	1,222,509
South Australia	847,432	4.03	62,185	4.15	909,617
Western Australia	157,860	3.96	...	...	157,860
Total	5,880,093	3.87	417,000	4.03	6,297,093
Tasmania	287,430	3.82	10,194	4.09	297,624
Grand Total	6,167,523	3.87	427,194	4.04	6,594,717

TABLE XI.—MUNICIPAL FINANCES, 1895.

Name of Colony.	No.	Area.		Revenue (exclusive of Loans.)*				Expenditure (including Expenditure from Loans).*	Loans Outstanding (including Loans from Government)
		Acres.	Per cent. of whole Colony.	From Government.	Raised by Local Taxation.	From other Sources.	Total.		
				£	£	£	£	£	£
New South Wales	182	1,754,941	.9	53,433	499,745	201,011	754,239	954,380	2,583,874
Victoria	207	55,786,518	99.2	154,003	896,199	142,882	1,193,084	1,229,879	4,025,390
Queensland	153	427,506,560	100.0	69,118	219,037	107,404	395,559	392,108	472,398
South Australia	173	27,173,451	4.7	33,114	129,396	80,073	242,583	241,539	...
Total	715	512,221,470	40.7	309,718	1,744,377	531,370	2,585,465	2,817,906	7,081,662
Tasmania	135	7,142,408	42.3	6,200	86,980	22,752	115,932	164,148	...
Grand Total	850	519,363,878	55.15	315,918	1,831,357	554,122	2,701,397	2,982,054	7,081,662

* The net revenue and expenditure are given for Victoria; but refunds and transfers are included in the figures for New South Wales.

Name of Colony.	From the United Kingdom.	From the Australasian Colonies.	From Other Countries.	Total.	To the United Kingdom.	To the Australasian Colonies.	To Other Countries.	Total.
	£	£	£	£	£	£	£	£
New South Wales	6,420,107	7,321,668	2 250,640	15,992,415	9,371,418	7,590,985	4,972,382	21,934,785
Victoria	4,759,546	5,800,710	1,912,088	12,472,344	8,068,121	4,461,638	2,017,973	14,547,732
Queensland	2,308,695	2,617,509	422,803	5,349,007	3,418,516	5,464,264	99,826	8,982,600
South Australia Proper ...	1,857,989	2,832,841	894,771	5,585,601	2,362,593	3,125,953	1,688,492	7,177,038
Do., Northern Territory ...	5,711	55,499	34,069	95,279	15,530	138,529	21,645	175,704
Western Australia	943,477	2,702,542	128,932	3,774,951	328,125	932,018	72,411	1,332,554
Total	16,295,525	21,330,769	5,643,303	43,269,597	23,564,303	21,713,387	8,872,723	54,150,413
Tasmania	315,172	770,060	9,225	1,094,457	202,870	1,168,405	1,788	1,373,063
Grand Total	16,610,697	22,100,829	5,652,528	44,364,054	23,767,173	22,881,792	8,874,511	55,523,476

Name of Colony.	Value of Exports of Home Produce.	Value per Head of—*		Exports of Home Produce.	
		Imports.	Exports.	Value per Head.*	Percentage of Total Exports.
	£	£ s. d.	£ s. d.	£ s. d.	
New South Wales	16,436,210	12 12 11	17 6 11	12 19 11	74.93
Victoria	11,615,493	10 11 5	12 6 7	9 16 10	79.84
Queensland	8,865,538	11 16 3	19 16 9	19 11 7	98.70
South Australia Proper	3,537,751	16 0 6	20 11 10	10 3 0	49.29
Do., Northern Territory	174,688	20 4 4	37 5 7	37 1 4	99.42
Western Australia	1,273,637	41 14 2	14 14 5	14 1 5	95 58
Total	41,903,318	12 19 0	16 4 2	12 10 10	77.38
Tasmania	1,305,160	6 17 6	8 12 7	8 4 0	95.05
Grand Total	43,208,478	12 2 1	15 17 3	12 6 10	77.82

NOTE.—There is reason to believe that both imports and exports are over-valued in most of the colonies.
* In calculating these results, the mean populations shown in the last column of Table II. have been used.

TABLE XIII.—SHIPPING, 1895.

Name of Colony.	Inwards.		Outwards.		Total.	
	Vessels.	Tons.	Vessels.	Tons.	Vessels.	Tons.
New South Wales...	3,121	2,929,758	3,090	2,930,280	6,211	5,860,038
Victoria	1,948	2,181,539	1,889	2,167,147	3,837	4,348,686
Queensland...	584	469,710	634	502,195	1,218	971,905
South Australia (Proper)...	1,106	1,483,448	1,110	1,496,203	2,216	2,979,651
,, ,, (Northern Territory) ...	73	85,575	68	85,515	141	171,090
Western Australia	485	814,368	433	764,185	918	1,578,553
Total	7,317	7,964,398	7,224	7,945,525	14,541	15,909,923
Tasmania	711	463,980	742	473,546	1,453	937,526
Grand Total	8,028	8,428,378	7,966	8,419,071	15,994	16,847,449

TABLE XIV.—GOVERNMENT RAILWAYS, 1895-6.

Colony.	Gauge.	Length Open.	Capital Cost at end of Year.	Gross Receipts.	Working Expenses.	Net Receipts.	Percentage of Net Revenue to mean Capital Cost.
	Ft. in.	Miles.	£	£	£	£	
New South Wales	4 8½	2,531	36,852,194	2,820,417	1,551,888	1,268,529	3.45
Victoria	5 3	3,106	38,102,856	2,401,392	1,546,475	854,917	2.25
Queensland	3 6	2,380	16,759,406	1,085,494	644,362	441,132	2.65
South Australia (Proper)	5 3 3 6	1,722	12,583,443	986,500	583,022	403,478	3.21
,, (Northern Territory)	3 6	146	1,153,116	15,289	15,289	...	...
Western Australia	3 6	588	2,316,824	529,616	263,705	265,911	12.06

TABLE XV.—POSTAL RETURNS, 1895.

Name of Colony.	Number of Post Offices.	Number passing through the Post Office (counted once).				Revenue.			Expenditure (Post and Telegraph.)
		Letters and Post Cards.	Newspapers.	Letters and Post Cards.	Newspapers.				
		Total.	Total.	Per Head of Population.	Per Head of Population.	Postage and Money Order.	Telegraphs and Telephones.	Totals.	
						£	£	£	£
New South Wales ...	1,470	69,373,690	44,902,900	54.86	35.51	473,793	175,058	648,851	773,266
Victoria	1,573	*62,526,448	*22,729,005	*55.90	*20.32	356,280	132,162	488,442	535,770
Queensland	1,033	18,278,870	11,885,858	40.36	26.25	158,682	76,011	234,693	295,065
South Australia	665	17,073,913	8,723,501	48.99	25.03	122,305	105,707	228,012	192,791
Western Australia ...	230	17,867,952	17,996,387	197.41	198.83	46,908	65,526	112,434	108,578
Total...	4,971	185,120,873	106,237,651	55.48	31.84	1,157,968	554,464	1,712,432	1,905,470
Tasmania...	327	5,894,708	4,506,191	37.04	28.32	40,481	15,322	55,803	61,972
Grand Total ...	5,298	191,015,581	110,743,842	54.57	31.64	1,198,449	569,786	1,768,235	1,967,442

* Figures for 1890, those for a later year not having been compiled.

TABLE XVI.—ELECTRIC TELEGRAPHS AND TELEPHONES, 1895.

Name of Colony.	Telegraphs.						Telephones and Private Wires.			
	Number of Miles Open at end of Year.		Telegrams Transmitted.			Amount Received.	Number of Public Exchanges.	Miles of Wire.	Number of Subscribers —Exchange and Other.	Amount Received.
	Line.	Wire.	Paid.	Unpaid.	Total.					
						£				£
New South Wales	14,847	28,799	2,269,505	...	2,269,505	149,102	18	*	3,812	25,956
Victoria	7,091	14,409	1,966,518	67,112	2,033,630	95,896	13	9,887	2,609	36,266
Queensland	9,979	17,790	966,108	89,507	1,055,615	71,034	18	833	776	4,977
South Australia	5,620	11,012	*	*	965,943	91,952	8	2,460	902	13,755
Western Australia... ...	4,577	5,670	657,760	63,232	720,992	61,673	2	462	494	3,853
Total	42,114	77,680	5,859,891*	219,851	7,045,685	469,657	59	13,642	8,593	84,807
Tasmania	2,210	3,848	152,341	37,396	189,737	12,273	3	521	627	3,049
Grand Total... ...	44,324	81,528	6,012,232	257,247	7,235,422	481,930	62	14,163	9,220	87,856

* Where asterisks occur the information has not been furnished, or is incomplete.

Name of Colony.	Area of Colony in Acres.	During the Year 1895. Sold by Auction, Private Contract, &c. Area.	Am'nt of Purchase Money.	Average Price per Acre.	Selected under System of Deferred Payments.	Granted without Purchase.	Total Extent wholly or Conditionally Alienated.
	Acres.	Acres.	£	£ s. d.	Acres.	Acres.	Acres.
New South Wales	197,872,000	22,572	64,201	2 16 11	316,007	7,640	346,219
Victoria	56,245,760	4,208	18,784	4 9 3	80,310	12,102	96,620
Queensland	427,663,360	29,281	20,783	0 14 2	231,564	324	261,169
South Australia (Proper)... ...	243,075,200	1,637	2,486	1 10 4	...	30	1,667
,, (Northern Territory)	335,116,800	34	212	6 4 8	...	...	34
Western Australia...	624,588,800	37,480	89,408	2 7 9	73,418	190,906	301,804
Total	1,884,561,920	95,212	195,874	2 1 2	701,299	211,002	1,007,513
Tasmania	16,880,000	269	5,193	19 6 1	14,316	558	15,143
Grand Total	1,901,441,920	95,481	201,067	2 2 1	715,615	211,560	1,022,656

Name of Colony.	Up to the end of 1895.—Extent— Alienated in Fee Simple. Sold.	Granted without Purchase.	In Process of Alienation under System of Deferred Payments.	At the end of 1895.—Extent. Alienated or in Process of Alienation.	Neither Alienated nor in Process of Alienation.
	Acres.	Acres.	Acres.	Acres.	Acres.
New South Wales	24,165,635	401,310	20,328,637	44,895,582	152,976,418
Victoria	17,552,171	66,536	5,453,036	23,071,743	33,740,017
Queensland	12,384,748	69,092	1,757,755	14,211,595	413,451,765
South Australia (Proper)	7,152,418	748,453	5,741,642	13,842,513	229,232,687
,, (Northern Territory)	477,253	48	331	477,632	334,639,168
Western Australia	6,152,332	*	525,019	8,131,739	616,457,061
Total	67,884,557	*	34,006,420	104,630,804	1,779,931,116
Tasmania	*	*	*	4,711,074	12,168,926
Grand Total	*	*	*	109,341,878	1,792,100,042

* Where asterisks occur the information has not been furnished or is incomplete.

TABLE XVIII.—STATE PRIMARY EDUCATION, 1895.

Name of Colony.	At the End of 1895.				Gross Enrolment of Scholars during 1895.		
	Number of State Schools.	Number of Teachers.					
		Males.	Females.	Total.	Males.	Females.	Total.
New South Wales	2,563	2,340	2,137	4,477	128,847	117,057	245,904
Victoria	1,722	1,751	2,732	4,483	119,653	112,399	232,052
Queensland	738	730	805	1,535	43,428	39,409	82,837
South Australia...	634	414	713	1,127	33,722	30,757	64,479
Western Australia	152	76	149	225	4,396	4,348	8,744
Total	6,009	5,311	6,536	11,847	330,046	303,970	634,016
Tasmania...	258	215	271	486	10,852	9,055	19,907
Grand Total	6,267	5,526	6,807	12,333	340,898	313,025	653,923

Name of Colony.	Scholars in Average Daily Attendance during the Year.			Estimated Number of Distinct Children attending during Year.	Expenditure on State Education.			Cost of Instruction per head of—	
	Total Number.	Number to each Teacher.	Percentage of Scholars on the Rolls.		Am'nts contributed by— State.	Parents, &c. in Fees.	Total.	Mean Population.	Scholars in Average Attendance.
					£	£	£	s. d.	£ s. d.
New South Wales	139,979	31	56.92	216,396	628,507	73,320	701,827	11 1	5 0 3
Victoria	134,572	30	57.99	205,486	489,905	1,478	491,383	8 4	3 13 0
Queensland	48,270	31	58.27	74,542	172,934	—	172,934	7 8	3 11 8
South Australia	39,324	35	60.99	59,003	127,551	1,116	127.667	7 5	3 5 5
Western Australia	6,393	28	73.11	8,744	26,575	2,316	28,891	6 5	5 13 10
Total...	368,538	31	58.13	564,171	1,445,472	78,230	1,523,702	9 2	4 2 8
Tasmania	10,642	22	53.46	14,594	32,972	9,423	42,400	5 4	3 19 8
Grand Total ...	379,180	53	57.98	578,765	1,478,444	87,658	1,566,102	8 11	4 2 7

NOTE.—The State system of education is compulsory and undenominational (or secular) in all the colonies, and Western Australia is now the [illegible] to denominational schools. Public instruction is free in Victoria, Queensland, South Australia (from 1st

TABLE XIX.—AGRICULTURAL STATISTICS, 1895-1896. LAND IN CULTIVATION.

*** The Agricultural Statistics are collected in most of the Colonies in the months of February and March.

Name of Colony.	Number of Acres under Tillage.		Number of Acres under—									
	Total.	Per Head of Population.	Wheat.	Oats.	Barley.	Maize.	Other Cereals.	Potatoes.	Hay.	Vines.	Green Forage.	Other Tillage.
New South Wales	1,649,462	1.29	596,684	23,750	7,590	211,104	2,275	24,722	319,296	7,519	367,695	88,827
Victoria	2,884,514	2.44	1,412,736	255,503	78,438	7,186	33,713	43,895	464,482	30,365	206,190	352,006
Queensland ...	299,278	.65	27,090	922	721	100,481	918	9,240	28,609	2,021	19,552	109,724
South Australia*	2,602,543	7.38	1,410,955	13,619	13,072	...	4,451	6,510	361,145	17,418	26,904	748,469
Western Australia	153,112	1.51	23,241	1,880	1,932	23	327	668	63,804	2,217	430	58,590
Total	7,588,909	2.25	3,470,706	295,674	101,753	318,794	41,684	85,035	1,237,336	59,540	620,771	1,357,616
Tasmania	458,914	2.85	64,652	32,699	6,178	...	13,649	19,247	54,748	30	214,586	53,125
Grand Total	8,047,823	2.29	3,535,358	328,373	107,931	318,794	55,333	104,282	1,292,084	59,570	835,357	1,410,741

NOTE.—Land in fallow is included in the total area under tillage in all the Colonies, except New South Wales; but land under permanent artificial grass is not included in Queensland, Western Australia and New Zealand.

* The figures for South Australia are for the year 1893-4.

TABLE XX.—AGRICULTURAL STATISTICS, 1895-6.—PRODUCE OF CROPS.

Name of Colony.	Bushels Raised of—					Tons Raised of—		Gallons of Wine Made.
	Wheat.	Oats.	Barley.	Maize.	Other Cereals.	Potatoes.	Hay.	
New South Wales	5,195,312	374,196	96,119	5,687,030	35,150	56,179	229,671	885,673
Victoria	5,669,174	2,880,045	715,592	351,891	295,724	117,238	390,861	2,226,999
Queensland	123,630	10,887	7,756	2,391,378	23,414	19,027	50,965	238,208
South Australia	5,929,300*	172,605	205,577	...	72,744	22,958	334,769	712,845
Western Australia	188,076	19,326	18,691	596	6,540	2,290	53,757	79,550
Total	17,105,492	3,457,059	1,043,735	8,430,895	433,572	217,692	1,060,023	4,143,275
Tasmania	1,164,855	906,934	138,833	...	245,611	81,423	62,345	...
Grand Total... ...	18,270,347	4,363,993	1,182,568	8,430,895	679,183	299,115	1,122,368	4,143,275

Name of Colony.	Bushels per Acre.					Tons per Acre of—	
	Wheat.	Oats.	Barley.	Maize.	Other Cereals.	Potatoes.	Hay.
New South Wales	8.71	15.76	12.66	26.94	15.45	2.27	.72
Victoria	4.01	11.27	9.12	48.97	8.77	2.67	.84
Queensland	4.56	11.81	10.76	23.80	25-51	2 06	1.78
South Australia	4.20	12.67	15.73	...	16.34	3.53	.93
Western Australia	8.09	10.28	9.67	25.91	20.00	3.43	.84
Total	4.93	11.69	10.26	26.45	10.40	2.56	.86
Tasmania	18.02	27.74	22.47	...	18.00	4.23	1.14
Grand Total... ...	5.17	13.26	10.96	26.45	12.27	2.86	.88

TABLE XXI.—LIVE STOCK, 1895-6.

Name of Colony.	Number of—			
	Horses.	Cattle.	Sheep.	Pigs.
New South Wales	487,943	2,150,057	46,508,363	221,597
Victoria *	431,547	1,833,900	13,180,943	337,588
Queensland	468,743	6,822,401	19,856,959	100,747
South Australia (Proper) *	187,666	423,602	7,267,642	86,418
,, ,, (Northern Territory)*	13,818	251,682	57,361	1,735
Western Australia	58,506	200,091	2,295,832	27,015
Total	1,648,223	11,681,733	89,167,100	775,100
Tasmania	31,580	162,801	1,523,846	70,142
Grand Total	1,679,803	11,844,534	90,690,946	845,242

Note.—Live Stock Statistics are collected in most of the colonies with Agricultural Statistics in the months of February and March.
* The figures for Victoria are for the year 1894-5, and those for South Australia for 1893-4, no statistics having been published since.

TABLE XXII.—COAL RAISED, 1895.

Colony.	Coal Raised.		Average Price at Pit's Mouth at End of Year.
	Quantity.	Value.	
	Tons.	£	s. d.
New South Wales	3,738,589	1,095,327	5 10¼
Victoria	194,226	118,400	12 2¼
Queensland	323,068	132,530	8 2½
Tasmania	33,349	14,029	8 4

TABLE XXIII.—WOOL PRODUCTION, 1895.

Name of Colony.	Wool Imported.		Wool Exported.		Wool used in Manufacture in Colony.		Wool Production, 1895.		
							Quantity.		
	Quantity.	Value.	Quantity.	Value.	Quantity.	Value at 9d. per lb.	Total.	Av'rage to each Sheep.	Total Value.
	lbs.	£	lbs.	£	lbs.	£	lbs.	lbs.	£
New South Wales ...	32,547,101	968,348	329,992,675	9,976,044	920,270	34,510	298,365,844	6.42	9,042,206
Victoria	86,701,421	2,367,915	163,779,290	5,151,153	1,847,533	69,283	78,925,402	5.99	2,852,521
Queensland	160,250	4,424	85,438,743	2,991,413	260,000	9,750	85,538,493	4.31	2,996,739
South Aust. (Proper)	12,750,629	378,170	68,842,576	1,880,514	...	...	56,091,947	7.72	1,502,344
Do. (Northern Ter.)	...	...	230,913	5,808	...	...	230,913	4.02	5,808
Western Australia ...	..	...	8,290,805	183,510	...	...	8,290,805	3.61	183,510
Total	132,159,401	3,718,857	656,575,002	20,188,442	3,027,803	113,543	527,443,404	5.92	16,583,128
Tasmania	...	...	7,223,219	202,341	152,590	5,720	7,375,809	4.84	208,061
Grand Total ...	132,159,401	3,718,857	663,798,221	20,390,783	3,180,393	119,263	534,819,213	5.90	16,791,189

TABLE XXIV.—BREADSTUFFS IMPORTED AND EXPORTED, 1895 (WHEAT, FLOUR, AND BISCUIT).*

Colony.	N. S. Wales.	Victoria.	Queensland.	Sth. Australia.	West Australia.	Tasmania.	Total.
	Bushels.	Bushels.	Bushels.	Bushels.	Bushels.	Bushels.	Bushels.
Imported	1,288,929	500,687	1,945,954	61,062	608,180	79,512	4,484,324
Exported	99,015	4,880,051	4,381	6,277,644	...	45	11,261,136

* The quantities have been reduced in all cases to their equivalent in bushels of wheat, on the assumption that 41½ lbs. of flour, or 48 lbs. of biscuit, are equivalent to 1 bushel of wheat.

Name of Colony.	Butter.				Cheese.			
	Imported.	Exported.	Net Exports.*		Imported.	Exported.	Net Exports.*	
			Total.	To Countries outside Australasia.			Total.	To Countries outside Australasia.
	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.
New South Wales ...	2,199,261	2,147,650	— 51,611	2,064,226	265,511	200,721	— 64,790	76,977
Victoria	41,030	25,660,282	25,619,752	21,713,495	28,538	1,557,659	1,529,121	1,083,459
Queensland	1,041,069	40,325	—1,000,744	35,603	195,045	1,245	— 193,800	— 2,008
South Australia	189,879	1,932,928	1,743,049	1,026,281	114,942	157,263	42,321	— 1,145
Do. (Northern Territory)	11,958	...	— 11,958	— 420	4,542	...	— 4,542	— 396
Western Australia ...	1,907,913	3,360	—1,904,553	— 979	525,268	...	— 525,268	— 5,130
Total	5,391,110	29,785,045	24,393,935	24,838,206	1,133,846	1,916,888	783,042	1,151,757
Tasmania	284,975	304,249	19,274	...	4,080	1,290	— 2,790	— 646
Grand Total	5,676,085	30,089,294	24,413,209	24,838,206	1,137,926	1,918,178	780,252	1,151,111
	£	£	£	£	£	£	£	£
New South Wales ...	92,846	62,899	— 29,947	59,610	6,352	3,806	2,546	19,773
Victoria	1,306	978,687	977,381	816,139	1,438	30,915	29,477	562
Queensland	45,679	1,405	— 44,274	1,282	4,738	39	— 4,699	— 95
South Australia	6,469	77,500	71,031	48,337	2,636	3,369	733	— 154
Do. (Northern Territory)	689	...	— 689	— 32	153	...	— 153	— 15
Western Australia ...	73,999	86	— 73,913	— 30	11,201	...	— 11,201	— 166
Total	220,988	1,120,577	899,589	925,306	26,518	38,129	11,611	19,905
Tasmania	11,142	12,518	1,376	...	104	27	— 77	— 29
Grand Total	232,130	1,133,095	900,965	925,306	26,622	38,156	11,534	19,876

* The minus (—) sign indicates a net import.

TABLE XXVI.—GOLD PRODUCTION, 1895.

Name of Colony.	Gold Raised.					
	Prior to 1895.		During 1895.		Total.	
	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.
	Ozs.	£	Ozs.	£	Ozs.	£
New South Wales...	11,061,379	41,010,669	360,165	1,315,929	11,421,544	42,326,598
Victoria	59,415,021	237,660,084	740,086	2,960,344	60,155,107	240,620,428
Queensland...	9,926,924	34,744,234	631,682	2,210,887	10,558,606	36,955,121
South Australia	463,386	1,744,419	37,054	128,792	500,440	1,873,211
Western Australia	566,178	2,151,482	231,513*	879,748	797,691	3,031,230
Total	81,432,888	317,310,888	2,000,500	7,495,700	83,433,388	324,806,588
Tasmania	777,841	2,966,997	54,964	212,329	832,805	3,179,326
Grand Total	82,210,729	320,277,885	2,055,464	7,708,029	84,266,193	327,985,914

* Quantity declared for export only.

TABLE XXVII.—BANKS OF ISSUE.—AVERAGE OF QUARTER ENDED 31ST DECEMBER, 1895.

Name of Colony.	Number of Banks.*	Paid-up Capital.	Deposits.	Bank Notes in Circulation.	Advances.	Coin and Bullion.
			£	£	£	£
New South Wales...	13	£23,700,000	30,085,406	1,223,864	38,502,387	7,516,280
Victoria	11		30,295,362	960,300	39,035,087	8,213,550
Queensland...	11		11,266,256	7,295	15,401,811	2,160,087
South Australia	8		6,750,876	402,596	4,900,386	1,953,404
Western Australia	6		3,437,631	282,569	2,523,091	1,676,979
Total	18*		81,835,531	2,876,624	100,362,762	21,520,300
Tasmania	4		3,137,252	95,988	2,356,712	764,670
Grand Total	20*	—	84,972,783	2,972,612	102,719,474	22,284,970

* The quantity

TABLE XXVIII.—PUBLIC SAVINGS BANKS, 1895.

(Including both Government and Trustee Savings Banks.)

Colony.	On the 31st December.*				Maximum Amount on which Interest is Allowed.	Interest Allowed to Depositors in—	
	Number of Depositors.		Amount Remaining on Deposit.				
	Total.	Per 100 of Population.	Total.	Average to Each Depositor.		Government Banks.	Trustee Banks.
			£	£ s. d.	£	Per Cent.	Per Cent.
New South Wales	202,802	15.87	8,073,544	39 16 2	200	4	4
Victoria	336,531	28.48	7,265,487	21 11 9	250	2 & 2½	2 & 2½
Queensland	56,421	12.25	2,286,810	40 10 7	200	3½	...
South Australia	86,968	24.66	2,628,652	30 4 6	...	..	4 & 3½
Western Australia	8,323	8.22	221,815	26 13 0	500	3¾	...
Total	691,045	20.48	20,476,308	29 12 7	...	...	...
Tasmania	29,220	18.17	648,223	22 3 8	150	3½	3½
Grand Total	720,265	20.57	21,124,531	29 6 7	...	...	...

* Except in the case of Western Australia, for which the figures relate to 30th June, 1895.

ANNO QUINQUAGESIMO NONO ET SEXAGESIMO

VICTORIÆ REGINÆ.

A.D. 1897.

DRAFT OF A BILL

TO CONSTITUTE THE COMMONWEALTH OF AUSTRALIA.

Preamble.

WHEREAS the people of [*here name the Colonies which have adopted the Constitution*] have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established: And whereas it is expedient to make provision for the admission into the Commonwealth of other Australasian Colonies and possessions of Her Majesty: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as "The Constitution of the Commonwealth of Australia."

Act to bind Crown. Application of provisions shall extend to the Queen's successors.

2. This Act shall bind the Crown, and its provisions referring to Her Majesty the Queen shall extend to Her heirs and successors in the Sovereignty of the United Kingdom of Great Britain and Ireland.

Constitution of the Commonwealth of Australia.

Power to proclaim Commonwealth of Australia.

3. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a day therein appointed, not being later than six months after the passing of this Act, the people of [*here name the Colonies which have adopted the Constitution*] (hereinafter severally included in the expression "the said Colonies") shall be united in a Federal Constitution under the name of "The Commonwealth of Australia;" and on and after that day the Commonwealth shall be established under that name.

4. Unless it is otherwise expressed or implied, this Act shall commence and have effect on and from the day so appointed in the Queen's Proclamation; and the name "The Commonwealth of Australia" or "The Commonwealth" shall be taken to mean the Commonwealth of Australia as constituted under this Act. Commencement of Act.

5. The term "The States" shall be taken to mean such of the Colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, and Western Australia, and the Province of South Australia, as for the time being form part of the Commonwealth, and such Colonies or States as may hereafter be admitted into or established by the Commonwealth, and each of such parts of the Commonwealth shall be hereafter designated a "State." "States."

6. "The Federal Council of Australasia Act 1885" is hereby repealed, but such repeal shall not affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Constitution of the Commonwealth. Repeal of 48 and 49 Vict., chap. 60.

But any such law may be repealed as to any State by The Parliament of the Commonwealth, and may be repealed as to any Colony, not being a State, by the Parliament thereof.

7. The Constitution established by this Act, and all laws made by The Parliament of the Commonwealth in pursuance of the powers conferred by the Constitution, and all treaties made by the Commonwealth, shall, according to their tenor, be binding on the Courts, Judges, and people, of every State, and of every part of the Commonwealth, anything in the laws of any State to the contrary notwithstanding; and the laws and treaties of the Commonwealth shall be in force on board of all British ships whose last port of clearance or whose port of destination is in the Commonwealth. Operation of the Constitution and laws of the Commonwealth.

8. The Constitution of the Commonwealth shall be as follows:— Constitution.

THE CONSTITUTION.

This Constitution is divided into Chapters and Parts as follows:— Division of Constitution.

CHAPTER I.—THE PARLIAMENT.
PART I.—General.
PART II.—The Senate.
PART III.—The House of Representatives.
PART IV.—Provisions relating to both Houses.
PART V.—Powers of Parliament.
CHAPTER II.—The Executive Government.
CHAPTER III.—The Federal Judicature.
CHAPTER IV.—Finance and Trade.
CHAPTER V.—The States.
CHAPTER VI.—New States.
CHAPTER VII.—Miscellaneous.
CHAPTER VIII.—Amendment of the Constitution.

CHAPTER I.

THE PARLIAMENT.

PART I.—GENERAL.

Legislative powers.

1. The legislative powers of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is hereinafter called "The Parliament," or "The Parliament of the Commonwealth."

Governor-General.

2. The Queen may, from time to time, appoint a Governor-General, who shall be Her Majesty's representative in the Commonwealth, and who shall have and may exercise in the Commonwealth during the Queen's pleasure, and subject to the provisions of this Constitution, such powers and functions of the Queen as Her Majesty may think fit to assign to him.

Salary of Governor-General.

3. Until The Parliament otherwise provides, the annual salary of the Governor-General shall be Ten Thousand Pounds, and shall be payable to the Queen out of the Consolidated Revenue Fund of the Commonwealth.

The salary of a Governor-General shall not be altered during his continuance in office.

Application of provisions relating to Governor-General.

4. The provisions of this Constitution relating to the Governor-General shall extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to be the Chief Executive Officer or Administrator of the Government of the Commonwealth, by whatever title he is designated; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.

Oath of allegiance.

Schedule.

5. Every member of the Senate and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the Schedule to this Constitution.

Gov.-General to fix time and places for holding Session of Parliament. Power of dissolution.

6. The Governor-General may appoint such times for holding the first and every other Session of The Parliament as he may think fit, giving sufficient notice thereof, and may also from time to time, by Proclamation or otherwise, prorogue The Parliament, and may in like manner dissolve the House of Representatives.

First Session of Parliament.

The Parliament shall be called together not later than six months after the establishment of the Commonwealth.

Yearly Session of Parliament.

7. There shall be a Session of The Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of The Parliament in one Session, and its first sitting in the next Session.

Privileges, &c., of Houses.

8. The privileges, immunities, and powers of the Senate and of the House of Representatives, and of the members and the Committees of each House shall be such as are from time to

time declared by The Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and Committees, at the establishment of the Commonwealth.

PART II.—THE SENATE.

The Senate.

9. The Senate shall be composed of six senators for each State, and each senator shall have one vote.

The senators shall be directly chosen by the people of the State as one electorate.

The senators shall be chosen for a term of six years, and the names of the senators chosen by each State shall be certified by the Governor to the Governor-General.

The Parliament shall have power, from time to time, to increase or diminish the number of senators for each State, but so that the equal representation of the several States shall be maintained and that no State shall have less than six senators.

The qualification of electors of senators shall be in each State that which is prescribed by this Constitution or by The Parliament as the qualification for electors of members of the House of Representatives, but in the choosing of senators each elector shall vote only once, and if any elector votes more than once he shall be guilty of a misdemeanour.

Mode of election of Senators.

10. The Parliament of the Commonwealth may make laws prescribing a uniform manner of choosing the senators. Subject to such laws, if any, the Parliament of each State may determine the time, place, and manner of choosing the senators for that State.

Continuance of existing election laws until the Parliament otherwise provides.

Until such determination, and unless The Parliament of the Commonwealth otherwise provides, the laws in force in the several States for the time being, relating to the following matters, namely: The manner of conducting elections for the more numerous House of the Parliament of the State, the proceedings at such elections, Returning Officers, the periods during which elections may be continued, and offences against the laws regulating such elections shall, as nearly as practicable, apply to elections in the several States of senators.

Failure of a State to choose members not to prevent business.

11. The failure of any State to provide for its representation in the Senate shall not affect the power of the Senate to proceed to the despatch of business.

Issue of writs.

12. For the purpose of holding elections of members to represent any State in the Senate the Governor of the State may cause writs to be issued by such persons, in such form and addressed to such Returning Officer as he thinks fit.

Retirement of members.

13. As soon as practicable after the Senate first meets the senators chosen for each State shall be divided by lots into two classes. The places of the senators of the first-class shall be vacated at the expiration of the third year, and the places of those of the second-class at the expiration of the

sixth year, from the commencement of their term of service as herein declared, and afterwards there shall be an election every third year accordingly.

For the purposes of this section the term of service of a senator shall begin on and be reckoned from the first day of January next succeeding the day of his election, except in the case of the first election, when it shall be reckoned from the first day of January preceding the day of his election. The election to fill the places of senators retiring by rotation shall be made in the year preceding the day on which they are to retire.

How vacancies filled.

14. If the place of a senator becomes vacant before the expiration of his term of service the Houses of Parliament of the State he represented shall, sitting and voting together, choose a person to fill the vacancy until the expiration of the term or until the election of a successor as hereinafter provided whichever first happens. And if the Houses of Parliament of the State are in recess at the time when the vacancy occurs the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to fill the vacancy until the beginning of the next Session of the Parliament of the State or until the election of a successor, whichever first happens. At the next general election of members of the House of Representatives, or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

Qualifications of member.

15. The qualifications of a senator shall be those of a member of the House of Representatives.

Election of President of the Senate.

16. The Senate shall, at its first meeting and before proceeding to the despatch of any other business, choose a member to be President of the Senate ; and as often as the office of President becomes vacant the Senate shall again choose a member to be the President ; and the President shall preside at all meetings of the Senate ; and the choice of the President shall be made known to the Governor-General by a deputation of the Senate.

The President may be removed from office by a vote of the Senate. He may resign his office ; and upon his ceasing to be a member his office shall become vacant.

Absence of President provided for.

17. The Senate may choose a member to perform the duties of the President in his absence.

Resignation of place in Senate.

18. A senator may, by writing, addressed to the President, or to the Governor-General if there is no President, or if the President is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Disqualification of member by absence.

19. The place of a senator shall become vacant if for two consecutive months of any Session of the Parliament he without the permission of the Senate entered on its Journals fails to attend the Senate.

20. Upon the happening of a vacancy in the Senate the President, or if there is no President, or if the President is absent from the Commonwealth, the Governor-General shall forthwith notify the same to the Governor of the State in the representation of which the vacancy has happened. Vacancy in Senate to be notified to Governor of State.

21. Until The Parliament otherwise provides, any question respecting the qualification of a senator, or a vacancy in the Senate, shall be determined by the Senate. Questions as to qualifications, and vacancies in States Assembly.

22. The presence of at least one-third of the whole number of senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers. Quorum of Senate.

23. Questions arising in the Senate shall be determined by a majority of votes, and the President shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative. Voting in Senate.

PART III.—THE HOUSE OF REPRESENTATIVES.

24. The House of Representatives shall be composed of members directly chosen by the people of the several States, according to their respective numbers; as nearly as practicable there shall be two members of the House of Representatives for every one member of the Senate. Constitution of House of Representatives.

Until The Parliament otherwise provides for the method of determining the number of members for each quota, there shall be one member for each quota of the people of the State, and the quota shall, whenever necessary, be ascertained by dividing the population of the Commonwealth as shown by the latest statistics of the Commonwealth by twice the number of members of the Senate, and the number of members to which each State is entitled shall be determined by dividing the population of the State as shown by the latest statistics of the Commonwealth by the quota.

But each of the existing Colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, and Western Australia, and the Province of South Australia shall be entitled to five Representatives at the least.

25. In ascertaining the number of the people of any State, so as to determine the number of members to which the State is entitled, there shall be deducted from the whole number of the people of the State the number of the people of any race not entitled to vote at any elections for the more numerous House of the Parliament of the State. Provision for case of persons not allowed to vote.

26. When upon the apportionment of Representatives it is found that after dividing the number of the people of a State by the quota there remains a surplus greater than one-half of such quota, the State shall have one more representative. Mode of calculating number of members.

27. Notwithstanding anything in section 24, the number of members to be chosen by each State at the first election shall be as follows: [*To be determined according to latest statistical returns at the date of the passing of the Act, and in relation to the quota referred to in previous sections.*] Representatives in first Parliament.

Increase of number of House of Representatives.

28. Subject to the provisions of this Constitution, the number of members of the House of Representatives may be from time to time increased or diminished by the Parliament.

Electoral divisions.

29. Until The Parliament otherwise provides, the electoral divisions of the several States for the purpose of returning members of the House of Representatives, and the number of members to be chosen for each electoral division, shall be determined from time to time by the Parliaments of the several States. Until division each State shall be one electorate.

Qualification of electors.

30. Until The Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of the Parliament of the State. But in the choosing of such members each elector shall vote only once, and if any elector votes more than once he shall be guilty of a misdemeanour, and no elector who has at the establishment of the Commonwealth, or who afterwards acquires a right to vote at elections for the more numerous House of the Parliament of the State, shall, whilst the qualification continues, be prevented by any law of the Commonwealth from exercising such right at elections for the House of Representatives.

Qualifications of members of House of Representatives.

31. Until The Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:—

I. He must be of the full age of twenty-one years, and must when chosen be an elector entitled to vote in some State at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is elected.

II. He must be either a natural born subject of the Queen, or a subject of the Queen naturalised by or under a law of Great Britain and Ireland, or of one of the said Colonies, or of the Commonwealth, or of a State, at least five years before he is elected.

Members of States Assembly ineligible for House of Representatives.

32. A member of the Senate shall not be capable of being chosen or of sitting as a member of the House of Representatives.

Election of Speaker of the House of Representatives.

33. The House of Representatives shall, at its first meeting after every general election, and before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker; and the Speaker shall preside at all meetings of the House; and the choice of the Speaker shall be made known to the Governor-General by a deputation of the House.

The Speaker may be removed from office by a vote of the House, or may resign his office.

Absence of Speaker provided for.

34. The House of Representatives may choose a member to perform the duties of the Speaker during his absence.

Resignation of place in House of Representatives.

35. A member may, by writing, addressed to the Speaker, or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by absence of member.

36. The place of a member shall become vacant if for two consecutive months of any session of the Parliament he, without permission of the House entered on its journals, fails to attend the House.

Issue of new writs.

37. Upon the happening of a vacancy in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or, if there is no Speaker or if he is absent from the Commonwealth, the Governor-General shall issue the writ.

Quorum of House of Representatives.

38. The presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.

Voting in House of Representatives.

39. Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker; and when the votes are equal the Speaker shall have a casting-vote, but otherwise he shall not vote.

Duration of House of Representatives.

40. Every House of Representatives shall continue for three years from the day appointed for the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.

The Parliament shall be called together not later than thirty days after the day appointed for the return of the writs for a general election.

Writs for general election.

41. For the purpose of holding general elections of members to serve in the House of Representatives, the Governor-General may cause writs to be issued by such persons, in such form, and addressed to such Returning Officers, as he thinks fit.

The writs shall be issued within ten days from the expiry of a Parliament, or from the proclamation of a dissolution.

Continuance of existing election laws until the Parliament otherwise provides.

42. Until The Parliament otherwise provides, the laws in force in the several States for the time being relating to the following matters, namely: The manner of conducting elections for the more numerous House of the Parliament of the State, the proceedings at such elections, the Returning Officers, the periods during which elections may be continued, the execution of new writs in case of places vacated otherwise than by dissolution, and offences against the laws regulating such elections, shall as nearly as practicable apply to elections in the several States of members of the House of Representatives.

Questions as to qualifications and vacancies.

43. Until The Parliament otherwise provides any question respecting the qualification of a member or a vacancy in the House of Representatives shall be determined by the House.

PART IV.—PROVISIONS RELATING TO BOTH HOUSES.

Allowance to members.

44. Until The Parliament otherwise provides, each member, whether of the Senate or of the House of Representatives, shall receive an allowance for his services of Four Hundred Pounds a year, to be reckoned from the day on which he takes his seat.

Disqualifications of members.

45. Any person:

I. Who has taken an oath or made a declaration or acknowledgment of allegiance, obedience, or adherence to a foreign power, or has done any act whereby he has become a subject or a citizen, or entitled to the rights or privileges of a subject or a citizen of a foreign power; or

II. Who is an undischarged bankrupt or insolvent, or a public defaulter; or

III. Who is attainted of treason, or convicted of felony or of any infamous crime:

shall be incapable of being chosen or of sitting as a member of the Senate or of the House of Representatives until the disability is removed by a grant of a discharge or the expiration or remission of the sentence, or a pardon, or release, or otherwise.

Place to become vacant on happening of certain disqualifications.

46. If a member of the Senate or of the House of Representatives:

I. Takes an oath or makes a declaration or acknowledgment of allegiance, obedience, or adherence to a foreign power, or does any act whereby he becomes a subject or citizen, or entitled to the rights or privileges of a subject or citizen of a foreign power; or

II. Is adjudged bankrupt or insolvent, or takes the benefit of any law relating to bankrupt or insolvent debtors, whether by assignment, composition, or otherwise, or becomes a public defaulter; or

III. Is attainted of treason or convicted of felony or of any infamous crime:

his place shall thereupon become vacant.

Disqualifying contractors and persons interested in contracts.

47. Any person who directly or indirectly himself, or by any person in trust for him, or for his use or benefit, or on his account, undertakes, executes, holds, or enjoys, in the whole or in part, any agreement for or on account of the public service of the Commonwealth, shall be incapable of being chosen or of sitting as a member of the Senate or of the House of Representatives while he executes, holds, or enjoys

the agreement, or any part or share of it, or any benefit or emolument arising from it.

Any person, being a member of the Senate or of the House of Representatives, who, in the manner or to the extent forbidden in this section, undertakes, executes, holds, enjoys or continues to hold, or enjoy, any such agreement, shall thereupon vacate his place.

But this section does not extend to any agreement made, entered into, or accepted by, an incorporated company, consisting of more than twenty persons, if the agreement is made, entered into, or accepted, for the general benefit of the company. Proviso exempting members of trading companies.

Any person being a member of the Senate or of the House of Representatives who, directly or indirectly, accepts or receives any fee or honorarium for work done or services rendered by him for or on behalf of the Commonwealth, whilst sitting as such member, shall thereupon vacate his place.

48. If a member of the Senate or of the House of Representatives accepts any office of profit under the Crown, not being one of the offices of State held during the pleasure of the Governor-General, and the holders of which are by this Constitution declared to be capable of being chosen and of sitting as members of either House of The Parliament, or accepts any pension payable out of any of the revenues of the Commonwealth during the pleasure of the Crown, his place shall thereupon become vacant, and no person holding any such office, except as aforesaid, or holding or enjoying any such pension, shall be capable of being chosen or of sitting as a member of either House of The Parliament. Place to become vacant on accepting office of profit.

Until The Parliament otherwise provides, no person, being a member, or within six months of his ceasing to be a member, shall be qualified or permitted to accept or hold any office the acceptance or holding of which would, under this section, render a person incapable of being chosen or of sitting as a member.

But this section does not apply to a person who is in receipt only of pay, half-pay, or a pension, as an officer or member of the Queen's navy or army, or who receives a new commission in the Queen's navy or army, or an increase of pay on a new commission, or who is in receipt only of pay as an officer or member of the military or naval forces of the Commonwealth and whose services are not wholly employed by the Commonwealth. Exceptions.

49. If any person by this Constitution declared to be incapable of sitting in the Senate or the House of Representatives or disqualified or prohibited from accepting or holding any office, sits as a member of either House, or accepts or holds such office, he shall, for every day on which he sits or holds such office, be liable to pay the sum of One Hundred Pounds to any person who may sue for it in any court of competent jurisdiction. Penalty for sitting when disqualified.

Disputed elections.

50. Until The Parliament otherwise provides, all questions of disputed elections arising in the Senate or the House of Representatives shall be determined by a Federal Court or a court exercising Federal jurisdiction.

Standing rules and orders to be made.

51. The Senate and the House of Representatives may each of them from time to time adopt standing rules and orders as to the following matters:—

I. The orderly conduct of the business of the Senate and of the House of Representatives respectively.

II. The mode in which the Senate and the House of Representatives shall confer, correspond, and communicate with each other relative to votes or proposed laws.

III. The manner in which notices of proposed laws, resolutions, and other business intended to be submitted to the Senate and House of Representatives respectively may be published for general information.

IV. The manner in which proposed laws are to be introduced, passed, numbered, and intituled.

V. The proper presentation of any proposed laws passed by the Senate and the House of Representatives to the Governor-General for his assent; and

VI. The conduct of all business and proceedings of the Senate and the House of Representatives severally and collectively.

PART V.—POWERS OF THE PARLIAMENT.

Legislative powers of the Parliament.

52. The Parliament shall, subject to the provisions of this Constitution, have full power and authority to make laws for the peace, order, and good government of the Commonwealth, with respect to all or any of the matters following that is to say:—

I. The regulation of trade and commerce with other countries, and among the several States.

II. Customs and excise and bounties, but so that duties of customs and excise and bounties shall be uniform throughout the Commonwealth, and that no tax or duty shall be imposed on any goods exported from one State to another.

III. Raising money by any other mode or system of taxation; but so that all such taxation shall be uniform throughout the Commonwealth.

IV. Borrowing money on the public credit of the Commonwealth.

V. Postal, telegraphic, telephonic, and other like services.

VI. The military and naval defence of the Commonwealth and the several States and the calling out of the forces to execute and maintain the laws of the Commonwealth.

VII. Munitions of war.

VIII. Navigation and shipping.

IX. Ocean beacons and buoys, and ocean lighthouses and lightships.

X. Astronomical and meteorological observations.

XI. Quarantine.

XII. Fisheries in Australian waters beyond territorial limits.

XIII. Census and statistics.

XIV. Currency, coinage, and legal tender.

XV. Banking, the incorporation of banks, and the issue of paper money.

XVI. Insurance, excluding State insurance not extending beyond the limits of the State concerned.

XVII. Weights and measures.

XVIII. Bills of exchange and promissory notes.

XIX. Bankruptcy and insolvency.

XX. Copyrights and patents of inventions, designs, and trade marks.

XXI. Naturalization and aliens.

XXII. Foreign corporations, and trading or financial corporations formed in any State or part of the Commonwealth.

XXIII. Marriage and divorce.

XXIV. Parental rights, and the custody and guardianship of infants.

XXV. The service and execution throughout the Commonwealth of the civil and criminal process and judgments of the courts of the States.

XXVI. The recognition throughout the Commonwealth of the laws, the public acts and records, and the judicial proceedings of the States.

XXVII. Immigration and emigration.

XXVIII. The influx of criminals.

XXIX. External affairs and treaties.

XXX. The relations of the Commonwealth to the islands of the Pacific.

XXXI. The control and regulation of the navigation of the River Murray and the use of the waters thereof from where it first forms the boundary between Victoria and New South Wales to the sea.

XXXII. The control of the railways with respect to transport for the military purposes of the Commonwealth.

XXXIII. The taking over by the Commonwealth with consent of the State of the whole or any pa the railways of any State or States upon terms as may be arranged between the Com wealth and the State.

XXXIV. Railway construction and extension with the co of any State or States concerned.

XXXV. Matters referred to The Parliament of the Com wealth by the Parliament or Parliaments o State or States, but so that the law shall ex only to the State or States by whose Parlia or Parliaments the matter was referred, a such other States as may afterwards adop law.

XXXVI. The exercise within the Commonwealth, a request or with the concurrence of the P ments of all the States concerned, of any le tive powers which can at the establishme this Constitution be exercised only by the P ment of the United Kingdom or by the Fe Council of Australasia.

XXXVII. Any matters necessary for, or incidental to carrying into execution of the foregoing p or of any other powers vested by this Con tion in The Parliament or the Executive Go ment of the Commonwealth or in any depart or officer thereof.

Exclusive powers of The Parliament.

53. The Parliament shall, subject to the provisions o Constitution, have exclusive powers to make laws fo peace, order, and good government of the Commonw with respect to the following matters :—

I. The affairs of the people of any race with resp whom it is deemed necessary to make s laws not applicable to the general commu but so that this power shall not exte authorise legislation with respect to the of the aboriginal native race in any State.

II. The government of any territory which b surrender of any State or States and the a ance of the Commonwealth becomes the s government of the Commonwealth, an exercise of like authority over all places ac by the Commonwealth, with the consent State in which such places are situat the construction of forts, magazines, ars dockyards, quarantine stations, or for any purposes of general concern.

III. Matters relating to any department or depart of the Public Service the control of whic this Constitution transferred to the Ex Goverment of the Commonwealth.

iv. Such other matters as are by this Constitution declared to be within the exclusive powers of The Parliament.

Money Bills.

Money bills.

54. Proposed laws having for their main object the appropriation of any part of the public revenue or moneys, or the imposition of any tax or impost, shall originate in the House of Representatives.

Appropriation and tax bills.

55. (1) The Senate shall have equal power with the House of Representatives in respect of all proposed laws, except laws imposing taxation and laws appropriating the necessary supplies for the ordinary annual services of the Government, which the Senate may affirm or reject, but may not amend. But the Senate may not amend any proposed law in such a manner as to increase any proposed charge or burden on the people.

(2) Laws imposing taxation shall deal with the imposition of taxation only.

(3) Laws imposing taxation, except laws imposing duties of customs on imports or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

(4) The expenditure for services other than the ordinary annual services of the Government shall not be authorised by the same law as that which appropriates the supplies for the ordinary annual services, but shall be authorised by a separate law or laws.

(5) In the case of a proposed law which the Senate may not amend, the Senate may at any stage return it to the House of Representatives with a message requesting the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make such omissions or amendments, or any of them, with or without modifications.

Recommendation of money votes.

56. It shall not be lawful for the Senate or the House of Representatives to pass any vote, resolution, or proposed law for the appropriation of any part of the public revenue or moneys to any purpose which has not been first recommended to the House in which the proposal for appropriation originated by message of the Governor-General in the Session in which the vote, resolution, or law is proposed.

Royal Assent.

Royal assent to bills.

57. When a proposed law passed by the Houses of The Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to the provisions of this Constitution, either that he assents to it in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure to be made known.

Governor-General.

Amendments.

The Governor-General may return to the House of The Parliament in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend to be made in such law, and the Houses may deal with the proposed amendments as they think fit.

Disallowance by Order in Council of law assented to by Governor-General.

58. When the Governor-General assents to a law in the Queen's name he shall by the first convenient opportunity send an authentic copy to the Queen, and if the Queen-in-Council within one year after the receipt thereof thinks fit to disallow the law, such disallowance on being made known by the Governor-General, by speech or message, to each of the Houses of The Parliament, or by Proclamation, shall annul the law from and after the day when the disallowance is so made known.

Signification of Queen's pleasure on bill reserved.

59. A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known by speech or message to each of the Houses of The Parliament, or by Proclamation, that it has received the assent of the Queen-in-Council.

An entry of every such speech, message, or Proclamation shall be made in the Journals of each House.

CHAPTER II.

THE EXECUTIVE GOVERNMENT.

Executive power to be vested in the Queen.

60. The executive power and authority of the Commonwealth is vested in the Queen, and shall be exercised by the Governor-General as the Queen's representative.

Constitution of Executive Council for Commonwealth.

61. There shall be a Council to aid and advise the Governor-General in the government of the Commonwealth, and such Council shall be styled the Federal Executive Council; and the persons who are to be members of the Council shall be from time to time chosen and summoned by the Governor-General and sworn as executive councillors, and shall hold office during his pleasure.

Application of provisions referring to Governor-General.

62. The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

The Executive Government. Ministers of State.

63. For the administration of the executive government of the Commonwealth, the Governor-General may from time to time appoint officers to administer such departments of the State of the Commonwealth as the Governor-General in Council may from time to time establish, and such officers shall hold office during the pleasure of the Governor-General, and shall be capable of being chosen and of sitting as members of either House of the Parliament.

Such officers shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

After the first general election no Minister of State shall hold office for a longer period than three calendar months unless he shall be or become a member of one of the Houses of The Parliament. Ministers to sit in Parliament.

64. Until The Parliament otherwise provides, the number of Ministers of State who may sit in either House shall not exceed seven, who shall hold such offices, and by such designation, as The Parliament from time to time prescribes, or, in the absence of provision, as the Governor-General from time to time directs. Number of Ministers.

65. Until The Parliament otherwise provides, there shall be payable to the Queen, out of the consolidated revenue fund of the Commonwealth, for the salaries of such officers the sum of Twelve Thousand Pounds a year. Salaries of Ministers.

66. Until The Parliament otherwise provides, the appointment and removal of all other officers of the Government of the Commonwealth shall be vested in the Governor-General in Council. Appointment of civil servants.

67. The executive power and authority of the Commonwealth shall extend to the execution of the provisions of this Constitution, and of the laws of the Commonwealth. Authority of Executive.

68. The command in chief of all the military and naval forces of the Commonwealth is hereby vested in the Governor-General as the Queen's representative. Command of military and naval forces.

69. On the establishment of the Commonwealth the control of the following departments of the Public Service in each State shall become transferred to the Executive Government of the Commonwealth, that is to say:— Immediate assumption of control of certain departments.

Customs and excise.
Posts and telegraphs.
Military and naval defence.
Ocean beacons and buoys, and ocean lighthouses and lightships.
Quarantine.

The obligations of each State in respect of the departments transferred shall thereupon be assumed by the Commonwealth.

70. All powers and functions which are at the date of the establishment of the Commonwealth vested in the Governor of a colony with or without the advice of his Executive Council, or in any officer or authority in a colony, shall, so far as the same continue in existence and need to be exercised in relation to the government of the Commonwealth, with respect to any matters which, under this Constitution, pass to the Executive Government of the Commonwealth, vest in the Governor-General with the advice of the Federal Executive Council, or in the officer or authority exercising similar powers or functions in, or under, the Executive Government of the Commonwealth. Powers under existing law to be exercised by Governor-General with advice of Executive Council.

CHAPTER III.

THE FEDERAL JUDICATURE.

Judicial power and Courts.

71. The judicial power of the Commonwealth shall be vested in one Supreme Court, to be called the High Court of Australia, and in such other courts as The Parliament may from time to time create or invest with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than four, as The Parliament may from time to time prescribe.

Judges' tenure, appointment, removal, and remuneration.

72. The Justices of the High Court and of the other courts created by The Parliament:

I. Shall hold their office during good behaviour.

II. Shall be appointed by the Governor-General in Council.

III. Shall not be removed except for misbehaviour or incapacity, and then only by the Governor-General in Council, upon an Address from both Houses of The Parliament in the same Session praying for such removal.

IV. Shall receive such remuneration as The Parliament may from time to time fix; but such remuneration shall not be diminished during their continuance in office.

Extent of judicial power.

73. The judicial power shall extend to all matters:—

I. Arising under this Constitution, or involving its interpretation.

II. Arising under any laws made by The Parliament.

III. Arising under any treaty.

IV. Of admiralty and maritime jurisdiction.

V. Affecting the public ministers, consuls, or other representatives of other countries.

VI. In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party.

VII. In which a writ of *mandamus* or prohibition is sought against an officer of the Commonwealth.

VIII. Between States.

IX. Relating to the same subject matter claimed under the laws of different States.

Appellate jurisdiction of High Court.

74. The High Court shall have jurisdiction, with such exceptions and subject to such regulations as The Parliament may from time to time prescribe, to hear and determine appeals from all judgments, decrees, orders, and sentences of any other federal court, or court exercising federal jurisdiction, or of the Supreme Court of any State, whether any such court is a court of appeal or of original jurisdiction, and the judgment of the High Court in all such cases shall be final and conclusive.

Until The Parliament otherwise provides, the conditions and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.

No appeals to the Queen in Council except in certain cases.

75. No appeal shall be allowed to the Queen in Council from any court of any State or from the High Court or any other federal court, except that the Queen may, in any matter in which the public interests of the Commonwealth, or of any State, or of any other part of Her dominions, are concerned, grant leave to appeal to the Queen in Council from the High Court.

Jurisdiction of Courts.

76. Within the limits of the judicial power The Parliament may from time to time :—

I. Define the jurisdiction to be exercised by the federal courts other than the High Court.

II. Prescribe whether the jurisdiction of the federal courts shall be exclusive of, or concurrent with, that which may belong to or be vested in the courts of the States.

III. Invest the courts of the States with federal jurisdiction within such limits, or in respect of such matters, as it thinks fit.

Original jurisdiction of High Court.

77. In all matters—

I. Affecting public ministers, consuls, or other representatives of other countries.

II. Arising under any treaty.

III. Between States.

IV. In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party.

V. In which a writ of *mandamus* or prohibition is sought against an officer of the Commonwealth :

the High Court shall have original as well as appellate jurisdiction.

Additional original jurisdiction may be conferred.

The Parliament may confer original jurisdiction on the High Court in other matters within the judicial power.

Number of judges.

78. The jurisdiction of the High Court, or in any other court exercising federal jurisdiction, may be exercised by such number of Judges as The Parliament prescribes.

Trial by jury.

79. The trial of all indictable offences cognizable by any court established under the authority of this Constitution shall be by jury, and every such trial shall be held in the State where the offence has been committed, and when not committed within any State the trial shall be held at such place or places as The Parliament prescribes.

Judges not to be Governor-General, &c.

80. No person holding any judicial office shall be appointed to or hold the office of Governor-General, Lieutenant-Governor, Chief Executive Officer, or Administrator of the Government, or any other executive office.

CHAPTER IV.

FINANCE AND TRADE.

Consolidated revenue fund.

81. All revenues raised or received by the Executive Government of the Commonwealth, under the authority of this Constitution, shall form one Consolidated Revenue Fund to be appropriated for the Public Service of the Commonwealth in the manner and subject to the charges provided by this Constitution.

Expenses of Collection.

82. The Consolidated Revenue Fund shall be permanently charged with the costs, charges, and expenses incident to the collection, management, and receipt thereof, which costs, charges, and expenses shall form the first charge thereon; and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

Money to be appropriated by law.

83. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law and by warrant countersigned by the Chief Officer of Audit of the Commonwealth.

The Commonwealth to have exclusive power to levy duties of Customs and excise, and offer bounties after a certain time.

84. The Parliament shall have the sole power and authority, subject to the provisions of this Constitution, to impose customs duties, to impose duties of excise, and to grant bounties upon the production or export of goods.

But this exclusive power shall not come into force until uniform duties of customs have been imposed by The Parliament.

Upon the imposition of uniform duties of customs all laws of the several States imposing duties of customs or duties of excise, and all such laws offering bounties upon the production or export of goods, shall cease to have effect.

The control and collection of duties of customs and excise and the control of the payment of bounties shall nevertheless pass to the Executive Government of the Commonwealth upon the establishment of the Commonwealth.

This section shall not apply to bounties or aids to mining for gold, silver, or other metals.

Transfer of officers.

85. Upon the establishment of the Commonwealth, all officers employed by the Government of any State in any department of the Public Service the control of which is by this Constitution assigned to the Commonwealth, shall become subject to the control of the Executive Government of the Commonwealth; and thereupon any such officer shall, if he is retained in the service of the Commonwealth, be entitled to receive from the State any gratuity or other compensation payable under the law of the State on abolition of his office; but if he is retained in the service of the Commonwealth he shall be entitled to retire from office at the time and upon the pension or retiring allowance permitted and provided by the law of the State on such retirement, and the pension or retiring allowance shall be paid by the State and by the Commonwealth respectively in the proportion which

his service with the State bears to the whole term of his service, and all existing and accruing rights of any officers so retained in the service of the Commonwealth shall be preserved.

Transfer of land, buildings, vessels, &c.

86. All lands, buildings, works, vessels, materials, and things necessarily appertaining to, or used in connection with, any department of the Public Service the control of which is by this Constitution transferred to the Commonwealth, shall, from the establishment of the Commonwealth, be taken over by and vest in the Commonwealth, either absolutely, or, in the case of the departments controlling customs and excise and bounties, for such time as may be necessary.

The fair value thereof, or of the use thereof, as the case may be, shall be paid by the Commonwealth to the State from which they are taken over. Such value shall be ascertained by mutual agreement, or, if no agreement can be made, in the manner in which the value of land, or of an interest in land, taken by the Government of the State for the like public purposes is ascertained under the laws of the State at the establishment of the Commonwealth.

Collection of existing duties of customs and excise.

87. Until uniform duties of customs have been imposed, the powers of the Parliaments of the several States existing at the establishment of the Commonwealth, respecting the imposition of duties of customs, the imposition of duties of excise, and the offering of bounties upon the production or export of goods, and the collection and payment thereof respectively, shall continue.

Until uniform duties have been imposed, the laws of the several States in force at the establishment of the Commonwealth respecting duties of customs, duties of excise, and bounties, and the collection and payment thereof, shall remain in force, subject to such alterations of the amount of duties or bounties as the Parliaments of the several States may make from time to time; and the duties and bounties shall continue to be collected and paid as theretofore, but by the officers of the Commonwealth.

Uniform duties of customs.

88. Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth.

On establishment of uniform duties of Customs and excise, trade within the Commonwealth to be free.

89. So soon as uniform duties of customs have been imposed trade and intercourse throughout the Commonwealth, whether by means of internal carriage or ocean navigation, shall be absolutely free.

Accounts to be kept.

90. Until uniform duties of customs have been imposed, there shall be shown in the books of the Treasury of the Commonwealth in respect of each State—

1. The revenues collected from duties of customs and excise, and from the performance of the services and the exercise of the powers transferred from the State to the Commonwealth by this Constitution.

II. The expenditure of the Commonwealth in the collection of duties of customs and excise, and in the performance of the services and the exercise of the powers transferred from the State to the Commonwealth by this Constitution.

III. The monthly balance (if any) in favour of the State.

Balance to be paid to States after deduction.

From the balance so found in favour of each State there shall be deducted its share of the expenditure of the Commonwealth in the exercise of the original powers given to it by this Constitution, and this share shall be in the numerical proportion of the people of the State to those of the Commonwealth as shown by the latest statistics of the Commonwealth. After such deduction the surplus shown to be due to the State shall be paid to the State month by month.

Expenditure.

91. During the first three years after the establishment of the Commonwealth, notwithstanding anything contained in the last section, the total yearly expenditure of the Commonwealth, in the exercise of the original powers given to it by this Constitution, shall not exceed the sum of Three Hundred Thousand Pounds; and the total yearly expenditure of the Commonwealth in the performance of the services and the exercise of the powers transferred from the States to the Commonwealth by this Constitution shall not exceed the sum of One Million Two Hundred and Fifty Thousand Pounds.

Payment to each State for five years after uniform tariffs.

92. During the first first five years after uniform duties of customs have been imposed the aggregate amount to be paid to the whole of the States for any year shall not be less than the aggregate amount returned to them during the year last before the imposition of such duties.

I. Subject to the last paragraph, for a period of five years after the imposition of uniform duties of customs, the total amount of duties of customs and excise collected in each year in any State, or estimated as hereinafter provided, as the case may require, shall be repaid to such State of the Commonwealth, after deducting from the amount, in proportion to the population, the share of the State in the total expenditure of the Commonwealth not provided for by other means of revenue. The repayment shall be made month by month to the several States, in, as nearly as practicable, the proper proportions:

II. For the purpose of ascertaining the proportion of revenue from customs and excise collected in each State there shall for the first year after the imposition of uniform duties of customs be shown in the books of the Treasury of the Commonwealth the total amount collected in each State for duties of customs and excise.

III. During such first year the duty chargeable under the uniform tariff upon goods which are imported

into any State (whether duty has or has not been actually paid thereon), and during that year exported to any other State for consumption therein, shall be deemed to have been collected in, and shall be credited to, such other State only, and all duties of excise paid in respect of any goods manufactured in any State, and so exported to another State for consumption therein, shall be deemed to have been collected in, and shall be credited to, such other State only.

iv. For the purpose of estimating the amount of the customs and excise arising in each State during each of the four years next after such first year, an average shall be taken by dividing the total customs and excise collected in the whole Commonwealth during such first year by the total population of the Commonwealth, as shown by the latest statistics of the Commonwealth, and the result shall be deemed to be the amount contributed by each person.

v. Where the amount credited to any State during such first year is in excess of the amount of the average so ascertained, there shall in each of the next four years be deducted therefrom one-fifth part of the excess; and where the amount so credited is less than such average, there shall be added to the amount one-fifth part of the sum by which the amount so credited is less than the average; and the sums so ascertained shall be the estimated amounts to be repaid in each of the four years to the States respectively.

Distribution of surplus.

93. After the expiration of five years from the imposition of uniform duties of customs, each State shall be deemed to contribute to the revenue an equal sum per head of its population, and all surplus revenue over the expenditure of the Commonwealth shall be distributed month by month among the several States in proportion to the numbers of their people as shown by the latest statistics of the Commonwealth.

Audit of accounts.

94. Until The Parliament otherwise provides, the laws in force in the several colonies at the establishment of the Commonwealth with respect to the receipt of revenue and the expenditure of money on account of the Government of the colony, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the respective States in the same manner as if the Commonwealth, or the Government or an officer of the Commonwealth, were mentioned therein whenever a colony, or the Government or an officer of a colony, is mentioned or referred to.

Equality of Trade.

No derogation from freedom of trade.

95. Preference shall not be given by any law or regulation of commerce or revenue to the ports of one State over the ports of another State, and any law or regulation made by the Commonwealth, or by any State, or by any authority constituted by the Commonwealth, or by any State, having the effect of derogating from freedom of trade or commerce between the different parts of the Commonwealth, shall be null and void.

Inter-State Commission.

96. The Parliament may make laws constituting an Inter-State Commission to execute and maintain upon railways within the Commonwealth, and upon rivers flowing through, in, or between, two or more States, the provisions of this Constitution relating to trade and commerce.

Powers of Commission.

97. The Commission shall have such powers of adjudication and administration as may be necessary for its purposes and as The Parliament may from time to time determine.

Taking over public debts of States.

98. The Parliament may take over the whole, or rateable proportion, of the public debts of the States as existing at the establishment of the Commonwealth, and may from time to time convert, renew, or consolidate such debts, or any part thereof; and the States respectively shall indemnify the Commonwealth in respect of the amount of the debts taken over, and thereafter the amount of interest payable in respect of the debts shall be deducted and retained from time to time from the respective shares of the surplus revenue of the Commonwealth which would otherwise be payable to the States, or if there be no surplus revenue payable, or if such surplus revenue be insufficient, then the amount shall be charged to and paid by the respective States wholly or in part. The ratable proportion of the debts of the several States to be taken over is to be calculated on the basis of the populations of the several States as ascertained by the latest statistics of the Commonwealth.

CHAPTER V.

THE STATES.

Continuance of powers of Parliaments of the States.

99. All powers which at the establishment of the Commonwealth are vested in the Parliaments of the several colonies, and which are not by this Constitution exclusively vested in The Parliament of the Commonwealth, or withdrawn from the Parliaments of the several States, are reserved to, and shall remain vested in, The Parliaments of the States respectively.

Validity of existing laws.

100. All laws in force in any of the colonies relating to any of the matters declared by this Constitution to be within the legislative powers of The Parliament of the Commonwealth shall, except as otherwise provided by this Constitution, continue in force in the States respectively, and may be repealed or altered by the Parliaments of the States, until provision is made in that behalf by The Parliament of the Commonwealth.

101. When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid. Inconsistency of laws.

102. All powers and functions which are, at the establishment of the Commonwealth, vested in the Governors of the colonies respectively, shall, so far as the same are capable of being exercised after the establishment of the Commonwealth, in relation to the government of the States, continue to be vested in the Governors of the States respectively. Powers to be exercised by Governors of States.

103. Subject to the provisions of this Constitution, the constitution of the several States of the Commonwealth shall continue as at the establishment of the Commonwealth, until altered by or under the authority of the Parliaments thereof in accordance with the provisions of their respective constitutions. Saving of Constitutions.

104. The provisions of this Constitution relating to the Governor of a State extend and apply to the Governor for the time being of the State, or other the chief executive officer or administrator of the government of the State, by whatever title he is designated. Application of provisions referring to Governor.

105. The Parliament of a State may at any time surrender any part of the State to the Commonwealth, and upon such surrender and the acceptance thereof by the Commonwealth such part of the State shall become and be subject to the exclusive jurisdiction of the Commonwealth. A State may cede any of its territory.

106. After uniform duties of customs have been imposed, a State shall not levy any impost or charge on imports or exports, except such as may be necessary for executing the inspection laws of the State; and the net produce of all imposts and charges imposed by a State on imports or exports shall be for the use of the Commonwealth; and any such inspection laws may be annulled by The Parliament of the Commonwealth. States not to levy import or export duties, except for certain purposes:

107. A State shall not, without the consent of The Parliament of the Commonwealth, raise or maintain any military or naval force, or impose any tax on property of any kind belonging to the Commonwealth; nor shall the Commonwealth impose any tax on property of any kind belonging to a State. Nor maintain forces, nor tax the property of the Commonwealth.

108. A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts. State not to coin money:

109. A State shall not make any law prohibiting the free exercise of any religion. Nor prohibit any religion.

110. A State shall not make or enforce any law abridging any privilege or immunity of citizens of other States of the Commonwealth nor shall a State deny to any person, within its jurisdiction, the equal protection of the laws. Protection of citizens of the Commonwealth.

111. Full faith and credit shall be given throughout the Commonwealth, to the laws, the public acts and records, and the judicial proceedings of the States. Recognition of Acts of State of various States.

Protection of States from invasion and domestic violence.

112. The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of a State, against domestic violence.

Custody of offenders against laws of the Commonwealth.

113. Every State shall make provision for the detention and punishment in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and The Parliament of the Commonwealth may make laws to give effect to this provision.

CHAPTER VI.

NEW STATES.

New States may be admitted to the Commonwealth.

114. The Parliament may from time to time admit to the Commonwealth any of the existing colonies of [*name the existing colonies which have not adopted the Constitution*] and may from time to time establish new States, and may upon such admission or establishment make and impose such terms and conditions, including the extent of representation in either House of The Parliament, as it thinks fit.

Provisional government of territories.

115. The Parliament may make such laws as it thinks fit for the provisional administration and government of any territory surrendered by any State to and accepted by the Commonwealth, or any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of The Parliament to the extent and on the terms which it thinks fit.

Alteration of limits of States.

116. The Parliament of the Commonwealth may from time to time, with the consent of the Parliament of a State, increase, diminish, or otherwise alter the limits of the States upon such terms and conditions as may be agreed to, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected.

Saving of rights of States.

117. A new State shall not be formed by separation of territory from a State without the consent of the Parliament thereof, nor shall a State be formed by the union of two or more States or parts of States, or the limits of a State be altered, without the consent of the Parliament or Parliaments of the State or States affected.

CHAPTER VII.

MISCELLANEOUS.

Seat of Government.

118. The seat of Government of the Commonwealth shall be determined by The Parliament.

Until such determination The Parliament shall be summoned to meet at such place within the Commonwealth as a majority of the Governors of the States, or, in the event of an equal division of opinion amongst the Governors, as the Governor-General shall direct.

Power to Her Majesty to authorise Governor-General to appoint deputies.

119. The Queen may authorize the Governor-General from time to time to appoint any person or any persons jointly or severally to be his deputy or deputies within any part or parts of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such of the powers and functions of the Governor-General as he deems it necessary or expedient to assign to such deputy or deputies, subject to any limitations or directions expressed or given by the Queen ; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.

Aborigines of Australia not to be counted in reckoning population.

120. In reckoning the numbers of the people of a State or other part of the Commonwealth aboriginal natives shall not be counted.

CHAPTER VIII.

AMENDMENT OF THE CONSTITUTION.

Mode of amending the Constitution.

121. The provisions of this Constitution shall not be altered except in the following manner :—

Any proposed law for the alteration thereof must be passed by an absolute majority of the Senate and of the House of Representatives, and shall thereupon be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives, not less than two nor more than six calendar months after the passage through both Houses of the proposed law.

The vote shall be taken in such manner as The Parliament prescribes.

And if a majority of the States and a majority of the electors voting approve the proposed law, it shall be presented to the Governor-General for the Queen's assent. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth only one-half the votes for and against the proposed law shall be counted in any State in which adult suffrage prevails.

But an alteration by which the proportionate representation of any State in either House of The Parliament or the minimum number of representatives of a State in the House of Representatives is diminished shall not become law without the consent of the majority of the electors voting in that State.

THE SCHEDULE.

OATH.

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. SO HELP ME GOD!

AFFIRMATION.

I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.

(NOTE.—*The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.*)

Errata—Vol. 2, p. 549, line 16—For "pronounced" read "denounced."
Vol. 3, p. 462, line 1—For "offices" read "officers."

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